REPORT
OF THE
COMMISSION OF INQUIRY
INTO THE COST OF ELECTRIC POWER TO
THE RESIDENTS OF PRINCE EDWARD ISLAND

The Honourable Melvin J. McQuaid, Q.C.
Commissioner

AUGUST, 1982

Charlottetown
Prince Edward Island
August, 1982

His Honour
The Lieutenant Governor in Council

May It Please Your Honour:

As Commissioner appointed under the provisions of The Public Inquiries Act (R.S.P.E.I. 1974, Chapter P-30) by Order-in-Council No. EC1173/81 dated December 10, 1981 to make full inquiry and to make findings and recommendations consistent with the public interest of the Province of Prince Edward Island into and concerning all matters relating to the cost of electric power to the residents of Prince Edward Island, I beg to submit to Your Honour this Report.

Melvin J. McQuaid
Commissioner

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PART I

I. INTRODUCTION

Over the years, many opinions have been expressed both for and against the usefulness of Commissions of Inquiry. The Balfour Report in 1910 was unanimous in the opinion:

> "...that the appointment of Royal Commissions is useful for the elucidation of difficult subjects which are attracting public attention, but in regard to which the information is not sufficiently accurate to form a preliminary to legislation. Parliament is both too inexpert and too preoccupied with transient political considerations to undertake the serious and lengthy analysis of many problems, the wise solution of which demands trained minds, impartial judgement, and disinterested study."

On the other side of the coin, we read in Hansard where a Member of the House of Commons, in 1924, expressed the view that:

> "...a government fears to face a question - a problem to be conveniently shelved - political friends in need of a job; and so your Royal Commission is set up, and with the usual benedictions, references and expense money goes on this costly way. What happens then is told chiefly in the Auditor-General's report. Huge travelling expenses, private secretaries for the Commissioners, clerks, stenographers, prolonged hearings, and finally a report which nobody reads, much less acts upon, and which serves chiefly

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> as additional printing contracts for others of the hungry faithful."

Despite the many divergent and contradictory views, we find that Commissions of Inquiry have been an essential device of governments both at the federal and provincial levels. They have inquired into such significant and crucial problems as taxation, federal-provincial relations, bilingualism, government organization, shopping malls, the personal conduct of politicians and judges, the practices of municipal police forces and the R.C.M.P., and other major subjects of political, economic and social concern. Their reports have received varied attention from the governments that established them, ranging from complete disregard to the enactment of remedial legislation, but it is generally admitted that they at least provide a vehicle for the expression of public opinion, and they gather and transmit to the proper authorities representative opinions on the issues referred to them.

In defence of Commissions of Inquiry, I share the view of John C. Courtney, expressed in his article, "Canadian Royal Commissions of Inquiry, 1946-1962":

> "Governing Canada is an exercise as much in diplomacy as in politics. Delicate issues and situations of which Canada has her share must, of necessity, be handled with the utmost tact. When cool, sober, detached reflection on policy matters by people not in the public forum of day-to-day politics is required, royal commissions of inquiry serve

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> the purpose admirably. Thus, if royal commissions were not available, it is reasonable to assume that some alternative form of investigatory technique equally attractive to governments would be introduced in order to allow governments a much needed outlet in times of stress. Royal commissions of inquiry presently serve as a most necessary part of the Canadian political system. They are part of the give and take of parliamentary democracy in Canada. It is precisely because of this that they have proved to be so popular with governments of the day and so unpopular with those not sitting on government benches."

In Prince Edward Island, public inquiries are regulated by a Public Inquiries Act (Appendix 1). The inquiry can only be initiated by the Lieutenant Governor in Council. The subject of the inquiry may be any matter:

> "...connected with the good government of this Province or the conduct of any part of the public business thereof and, among other things, the cost and retail sale price within the Province of any goods or commodity as well as the cost of carrying to and within the Province of such goods or commodity and the spread between the cost of production and retail price to the consumer in this Province."

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The powers of the Commission set up under the Act include the summoning of witnesses by subpeona, if necessary; requiring them to give evidence under oath and the power to require the production of any documents, books or papers which are in their possession and are relative to the matters being inquired into. The Commission, however, is not a court of law and does not decide substantive law issues, nor issues concerning the rights and duties of individuals. At its very highest, it is but a fact-finding, reporting and advisory body. As Mr. Justice Cattanach of the Federal Court of Canada pointed out in "Re. Copeland and MacDonald et el", 1974 - 88D.L.R. 3rd. 724 at p.731:

> "The Commission reports to the Governor in Council and it is for him to decide what shall be done. He may implement the advice given in the report in whole or in part, or he may consign the report to oblivion. The action to be taken thereon is exclusively his decision."

Four principal functions of a commission of inquiry are:

a) To investigate, advise and report;

b) To provide the Lieutenant Governor in Council with information which shall serve as a basis for developing or implementing policy;

c) To provide a means to sample public opinion relative to the subject matter of the inquiry;

d) To provide the public with a medium through which it can voice its grievances concerning the matters being inquired into.

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The inquiry which I have been commissioned to conduct is fostered by rising anxiety and concern over the rapidly escalating cost of electric power to Island consumers. It was generally recognized that the cost to us for this service far exceeded that paid by consumers in any of the other provinces of Canada, and it became increasingly obvious that some remedy had to be put in place if the economy of the Province was not to suffer further and irreparable harm.

Our manufacturers and processors are energy-intensive industries and they were finding themselves in a position where they were unable to compete with their counterparts operating in other provinces enjoying much lower power costs. Our farmers and food processors could not remain competitive and were struggling for survival. Recreational facilities, such as skating and curling rinks, are high consumers of electricity and were finding it increasingly more difficult to meet their power bills. Our municipalities and our residential users were being hit hard. In short, every facet of life was being adversely affected and the blame for this was, for the most part, being firmly placed at the doorstep of Maritime Electric Company, Limited, it being the regulated monopoly charged with the obligation to supply electric power to all areas of the Province except the Town of Summerside and its immediate environs. The issue became more explosive than ever when, in the Autumn of 1981, on the application of Maritime Electric, our Public Utilities Commission approved a 21% increase in power rates.

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Within this troubled context, the Government of Prince Edward Island, in December 1981, called a public inquiry under the provisions of our Public Inquiries Act and I was commissioned to examine and inquire into "all matters relating to the cost of electric power to the residents of Prince Edward Island". My terms of reference, dictated by the Lieutenant Governor in Council, appears as Appendix 2.

II. SCOPE OF INQUIRY

Let me repeat the opening words of my terms of reference:

> "To inquire into all matters relating to the cost of electric power to the residents of Prince Edward Island..."

I suggest that this confers as wide a mandate upon this Inquiry as has been conferred upon any inquiry authorized in this Province in the past. I immediately realized that the subject matter was one of great complexity and that in order to conduct a full and thorough inquiry I would require the help of qualified consultants to deal with specific matters in the fields of civil engineering and financial management. The Toronto-based firm of Leighton & Kidd Limited, consulting engineers, was retained as principal technical advisor to the Inquiry with a mandate to engage, subject to my prior approval, specialist consultants to deal with specific matters. All technical advisors were required to operate within specific time and cost restraints.

The principals and specialists of Leighton & Kidd Limited are widely recognized for their extensive experience, not only as

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consultants, but in the responsible positions which they have held with prominent electric utilities. Mr. A.J.G. Leighton, P.Eng., our chief consultant, has previously been associated with the construction of a number of hydro electric and power transmission projects and is a former member of the Ontario Energy Board. He has also appeared before committees of the Ontario Legislature and before utility regulatory boards in the Provinces of Nova Scotia, Newfoundland and Ontario.

Mr. E.W. Major, P.Eng., also of the firm of Leighton & Kidd Limited, was asked to review the engineering and operations aspect of the Company.

Mr. J.O. Dean of Toronto was engaged to review the financial structure and fiscal policies of Maritime Electric Company, Limited. Mr. Dean is a highly qualified financial advisor in the investment and energy fields and has prepared financial and economic reviews for corporations such as the Ontario Energy Board, Greenshields Incorporated, and Canadian Arctic Gas Study Group Limited.

Mr. W.P. Armes, C.A., was initially engaged to review the accounting and rate-making policies of Maritime Electric. However, it became obvious that, as a regulated utility, the determination of these policies is primarily the responsibility of the Public Utilities Commission. We therefore recommended that the Inquiry first investigate the relationship between Maritime Electric and the Public Utilities Commission. Mr. Armes was therefore directed to review this relationship. Mr. Armes has served for more than

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a decade as a consultant to provide advice and assistance to consumer groups and governmental bodies involved in regulatory proceedings.

Mr. L.W.Anderson of the management consultant firm of Currie, Coopers & Lybrand, investigated and reported to the Inquiry on the executive management structure of the Company, its management control and administrative procedures, and its policies and personnel relations. He also inquired into possible conflicts of interest of the Company's officers and directors. Mr. Anderson has specialized in human resource management and has conducted assignments both in Canada and abroad.

All of these consultants provided their independent opinions and testified before me, under oath, with respect to the effectiveness and efficiency of the Company's operations in the respective fields examined by them. I wish to acknowledge and thank them for their assistance.

Mr. S. David H. Jenkins was appointed as Commission Counsel and Mrs. Josette Gilbank was selected by me as Secretary to the Commission. Mr. Michael O'Brien, C.A., of the Charlottetown firm of Coopers & Lybrand, chartered accountants, was appointed to assist and advise on accounting and related financial matters, and Mr. John McClellan was seconded to me from the Land Use Commission to assist in matters of general administration. Mrs. Eileen Rossiter assumed responsibility for transcribing the evidence heard during

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all phases of the Inquiry and to assist in other work of a secretarial nature.

III. RULES OF PRACTICE AND PROCEDURE

Under our Public Inquiries Act the Commission is the master of its own procedure and is technically free to devise its own method of operation. One of our first tasks, therefore, was to draft Rules of Procedure which would govern the conduct of the Inquiry. These were prepared with a view to allowing the Inquiry to be conducted with as little formality as possible, while at the same time consistent with an orderly and properly regulated hearing. The Rules of Practice and Procedure appear herein as Appendix 3.

Strong representations were made to me by a group of concerned citizens operating under the name of H.O.P.E. (Help Our Provincial Environment) asking that I change the requirement that cross-examination of witnesses must be conducted through Commission Counsel or qualified legal counsel. While I recognize the importance of public participation, and have throughout the Inquiry continually encouraged it, I could foresee many roadblocks to the conducting of an orderly and efficient inquiry if all interested parties, whether or not trained in the art of cross-examination, were permitted to ask their own questions. Every consumer of electric power in the Province is an interested party, and if the privilege of cross-examination were extended to members of H.O.P.E., the same privilege would also have to be extended to other interested parties. That, in my opinion, would have resulted in confusion and an undue

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lengthening of the proceedings. After careful consideration I concluded that the requested change would not be advisable and therefore should be refused. On behalf of H.O.P.E., and in their own right as well, two of its members referred the matter to the Supreme Court of the Province asking that the Court issue an Order by way of Mandamus requiring me to make the requested change in the Rules. Mr. Justice Kenneth R. MacDonald heard the applicants but refused the Order for the reason that under the Public Inquiries Act the Commissioner has the authority to establish his own Rules of Procedure and that the Courts should not change the Rules made by him. A copy of the Order issued by the Court appears as Appendix 4. The decision of Mr. Justice MacDonald refusing the application for the Order of Mandamus did not meet with the approval of the applicants and they sought leave of the Court for an extension of the time to file a Notice of Appeal, the statutory time for appealing having elapsed. This application was heard by Chief Justice Nicholson and, for the reasons stated in his Judgement, (Appendix 5) was dismissed.

IV. PUBLIC MEETINGS

From the beginning, I recognized my mandate to be to conduct a fair and thorough Inquiry. With that end in view, I resolved that all persons, groups and organizations with an interest in the subject matter of the Inquiry should be given a fair opportunity to be heard and to state in their own language, and in their own way, their views on the whole matter of electric power. It is my

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firm conviction that it is only when the public is given an opportunity to be present and to express themselves, that the public will have complete confidence that everything possible is being done to arrive at the true facts. For this purpose I scheduled, and publicly advertised, a series of meetings in six locations throughout the Province. Individuals, groups and organizations were invited to make presentations, either by way of written briefs or orally. As an added convenience to those who were interested, night meetings were held in all locations, together with two afternoon sessions in the City of Charlottetown (Appendix 6). The officers of Maritime Electric offered their cooperation by attending all of the meetings and answering questions relative to the internal management and operation of the Company. All meetings were well attended by the public and many of those in attendance expressed their concern over the matters being inquired into. During the course of these meetings, ninety-three (93) presentations were made to the Commission and five hundred and thirty-seven (537) pages of evidence have been transcribed and now form part of the official record of the Commission. We were told, in no uncertain terms, of the impact escalating power costs was having on every segment of our community and our economy and what the ultimate effect would be unless something was done, and done soon, to soften the blow.

While the high cost of power was obviously of great concern to everybody, there were many other matters brought to the attention of the Commission at these public meetings relative to the service

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being provided by Maritime Electric to its customers. Maritime Electric made no attempt to avoid these issues. Company officials cooperated fully. When questions could not be answered on the spot, the Company promised to supply an answer to the questioner as soon as possible. To me, it appeared to be a valuable exercise in public relations for the Company and explained and clarified some of the misconceptions the public previously had concerning the operation and management of Maritime Electric.

Some of the main concerns expressed at the public meetings evolved around the existing practices of Maritime Electric with respect to such matters as bi-monthly estimating of power used rather than monthly meter readings; present billing practices whereby the number of days in each monthly billing fluctuated from month to month; a period of only fifteen days being allowed for payment before the delayed payment penalty is imposed; pole replacement; frequency of power interruptions; transmission losses; the inconvenience and additional expense suffered by customers outside the Charlottetown, Summerside and Montague areas in not being able to pay their monthly bills at a central location; and the failure of the Company to effectively promote energy conservation.

Arguments were presented both for and against public ownership of the utility.

It was the unanimous opinion of all who spoke on the matter, that the Maritime Energy Corporation should be reactivated with a

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view to working towards parity of rates for electric power in the Maritime Provinces.

Widely diverse views were held on alternate sources of energy such as wood, wind, hydro, natural gas, and nuclear generated electricity.

The effectiveness in the past of the Public Utilities Commission and its alleged failure to exercise greater control over Maritime Electric, together with its "court-like procedures" during deliberations, were also the subject of comment in several of the presentations.

V. PHASING

With such a variety of matters to be inquired into and dealt with, it was obvious that the Inquiry should be conducted in phases if confusion was to be avoided. Accordingly, the series of public meetings which were held in the several locations throughout the Province were designated as Phase I and the remainder of the Inquiry was divided into the following additional phases:

Phase IIA - Inquiry Into the Affairs of Maritime Electric Company, Limited.

Phase IIB - Inquiry Into Proposals Made by the Town of Summerside Electric Department.

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Phase III - Relationship Between the Public Utilities Commission and Electric Utilities Supplying Power to Residents of Prince Edward Island.

Phase IV - Relationship Between the Government of Prince Edward Island and Electric Utilities Supplying Power to Residents of Prince Edward Island.

Phase V - Policy Respecting the Following:

(i) Alternate sources of electric power, including conservation;

(ii) Appropriate public input in determining matters relating to the cost of electric power.

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PART II

VI. MARITIME ELECTRIC COMPANY, LIMITED

The Order in Council establishing the Inquiry has authorized me to inquire into "all matters relating to the cost of electric power to the residents of Prince Edward Island". In 1927, the government of the day saw fit to grant to Maritime Electric Company, Limited - a privately-owned utility - the exclusive franchise of supplying electric power to all residents of the Province (except those residing within the corporate boundaries of the Town of Summerside and its immediate environs). Since all succeeding governments have seen fit to allow this franchise to continue, it obviously became necessary for me to conduct a complete examination of the operations of that Company in an attempt to evaluate its past performance and also satisfy myself that its future performance would be directed to serving the best interests of all consumers of electric power.

As is the case with all privately-owned companies, Maritime Electric Company, Limited is owned and controlled by its shareholders and managed by its Board of Directors.

A. The Shareholders

At the time evidence was being heard, the share capital of the Company was comprised of 900,000 common shares plus 110,000 Series 'A' and Series 'B' cumulative redeemable preferred shares, all of which carry voting rights at shareholders' meetings on the basis of one vote per share held.

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These 900,000 common shares are owned by approximately 830 shareholders. While it is true that 27 percent of these 830 shareholders are residents of this Province, the really disturbing fact is that their collective holdings are relatively small, being only 8.84 percent of the common shares issued. Nobody giving evidence before the Inquiry was able to tell me how many of the 110,000 Series 'A' and Series 'B' cumulative redeemable preferred shares are owned by Islanders, but I feel quite safe in assuming that the number would not be large.

When one realizes that at a meeting of the shareholders each share owned carries one vote, it can be immediately seen that residents of this Province have very little to say with respect to the operation of a utility upon which they are totally dependent for electric power. Mr. Alan S. Gordon, for example, who is one of the Directors of the Company and resides in the Province of Quebec, owns either directly or indirectly 120,000 shares and by himself has 120,000 votes as compared to approximately 80,000 votes owned by all of the residents of this Province combined. The record further indicates that 66.48 percent of the shares are owned by residents of Quebec and Ontario as against the 8.84 percent owned by the residents of our own Province. These non-resident investors are, of course, not users of the service and are chiefly interested in receiving a reasonable return on their investment.

It is indeed unfortunate that a greater measure of the control of this Company is not in the hands of the people who are purchasing

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the power. This is apparently recognized by the Company itself when its Chief Executive Officer said in evidence that:

> "Ever since 1964, the Company has realized that it's in its own self-interest to have its shareholders in Prince Edward Island. The strongest possible position is to have shareholders who are also the people who are buying the power."

It is difficult to reconcile this desire on the part of the Company with action taken by Merrill Lynch, Royal Securities Limited, its underwriter, on the recent sale of 150,000 Cumulative Redeemable Retractable Preferred Shares of the Company. These shares carry voting rights on the basis of one vote for each share held.

On July 30, 1982, a "Notice of Hearing" appeared in that day's issue of the Guardian-Patriot over the name of the Executive Director of the Public Utilities Commission, the second paragraph of which stated as follows:

> "The Commission will convene a public hearing in respect of the application (to issue and sell these shares) on Wednesday, the 11th day of August, 1982 at 1:30 p.m. in the Commission Board Room, 5th Floor, Confederation Court Office Building, Suite 502, 134 Kent Street, Charlottetown, P.E.I."

I requested and received from the Public Utilities Commission a copy of the proceedings of that Hearing and included in what I received is a document entitled, "Direct Testimony - D.K. McKenney".

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This, presumably, contains the evidence given by Mr. McKenney at the August 11 Hearing and he was asked:

> "Q. Has the issue been properly authorized on behalf of the Company?
>
> A. The preliminary prospectus and financial statements were authorized at a meeting of the Company's Board of Directors held on July 15, 1982. A certified copy of the resolution passed by the Board of Directors on July 15, 1982 authorizing the Company to proceed with the prospectus is attached as Schedule 2. The preliminary prospectus was filed with the application on July 20, 1982. A Directors' Meeting to approve the terms of issue, final prospectus and Underwriting Agreement has been called for August 11, 1982." (Emphasis mine)

In effect, therefore, the application to issue and sell the shares was heard by the Public Utilities Commission on Wednesday, August 11 and Mr. McKenney gave evidence that the Directors would meet on that date and approve "the terms of issue, final prospectus and Underwriting Agreement".

On August 11 - the day the meeting was held - I called the Charlottetown office of Merrill Lynch, Royal Securities Limited and was advised that "the 150,000 shares were all sold yesterday" (August 10). The shares were therefore sold before authority to either issue or sell was given by the Public Utilities Commission

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and before the meeting which Mr. McKenney said would be held to approve the terms of the issue.

What opportunity did residents of the Province have to purchase these shares? They were all committed before the P.U.C. gave its approval and before we knew for sure the terms of the issue and what the dividend would be. They were a good investment. They sold for $20.00 per share and carried a dividend of 14 3/4 percent. For buyers in the proper tax bracket, the dividend tax credit could net the holder the equivalent of approximately 20 percent. It was an attractive investment and, in addition, the shares carried voting privileges. If, as Mr. Cameron maintains, Maritime Electric would prefer to have as its shareholders the people who are buying the power, it should have insisted that a substantial block of these shares be reserved for a reasonable period of time for sale only to residents of the Province. My conviction is that most Island investors did not realize that these shares could be available before approval of the issue had been given by the P.U.C. and by that time they were all spoken for.

While it may indeed be virtually impossible for Islanders to acquire a controlling interest in the Company, it is important that they own at least a substantial block of shares and thereby be in a position to fight for their rights and make their voices heard at shareholders' meetings where matters of vital concern to them are being discussed and decided. An opportunity to do this will soon present itself. The Chief Executive Officer has told us that within a year the Company will place on the market an issue

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of 130,000 common shares and that:

> "We will make a special effort on the sale of the rights and subsequent sales of shares to the public to provide special ways to have Prince Edward Islanders given an opportunity to buy the shares that are available."

These shares will probably sell for something in the area of $14 per share. In February of this year, for example, 6,697 shares sold for between $13.30 and $13.60 per share and it is quite unlikely that the price will substantially increase over this figure. The dividend payments may be relatively low for at least the first few years of the investment, but it is the opportunity for Islanders to acquire a greater measure of control over a utility which is now controlled by non-Islanders whose chief concern, in all probability, will not be that we get lower power rates.

The Government of Prince Edward Island should also give consideration to the purchase of a block of these shares. The role of electric power in this Province is sufficiently important to warrant government involvement. It is important that government be in close contact with the operations of the utility and know what is being planned from time to time. While it is true that management has, in the past, met on occasion with either the Premier or a member of his government, these occasional meetings are not, in my opinion, sufficient to allow government to be fully appraised of important decisions before they become policy. The government has a place in the the board room of this Company and the shareholders should appoint

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a member of government to its Board of Directors. The appointee could be either the Minister of Tourism, Industry and Energy or an alternate selected by him.

RECOMMENDATION #1

THAT when future issues of the voting shares of either Maritime Electric Company, Limited or Maritime Electric (P.E.I.) Limited are authorized by the Public Utilities Commission, it be a condition of such authorizations that the sale of these shares be confined for a period of at least fifteen (15) days to residents of the Province of Prince Edward Island and/or local institutional investors.

RECOMMENDATION #2

THAT during this fifteen day period the Company be required to undertake a comprehensive and well advertised promotional campaign with a view to acquainting all interested investors with the details of the issue.

RECOMMENDATION #3

THAT the Government of Prince Edward Island purchase a substantial block of the Company's voting shares and that at its next annual meeting of shareholders the Company nominate a representative of Government to its Board of Directors.

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B. The Board of Directors

The Company is managed by a Board of eleven Directors and this is the body that determines company policy. The Directors are appointed by the shareholders at their annual meeting and the Directors then appoint management personnel to carry out company policy as previously determined by them. The By-laws of the Company provide that the remuneration of the Directors shall be fixed by vote at the Company's annual meeting. The current remuneration includes an annual retainer of approximately $2,500 per year plus $200 per meeting, together with out-of-pocket expenses for such things as travel and accommodation.

The following shareholders, with their respective share holdings presently constitute the Board of Directors:

A.D. Cameron, Esq.	-	1,200 shares
Alan S. Gordon, Esq.	-	120,000 shares
William G. Lea, Esq.	-	1 share
G.A. McMurdo, Esq.	-	100 shares
G.N.C. Rivington, Esq.	-	500 shares
Alan H. Holman, Esq.	-	950 shares
A.W. Howard, Esq.	-	3,450 shares
R.W. Smith, Esq.	-	1,725 shares
J.H. Reynolds, Esq.	-	240 shares
K.V. Cox, Esq.	-	900 shares
D.A. Scales, Esq.	-	4,300 shares

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It will be noted that five of these Directors - Messrs. Cameron, Gordon, Rivington, Cox and Howard - are non-residents of the Province. Of the Board Members who are Prince Edward Island residents, Messrs. Smith and Reynolds are employees of Maritime Electric and Mr. Lea is retained as the Company Solicitor and is paid for his services as such. The situation therefore is that, out of the eleven Directors, eight are either non-residents or are paid out of Company funds for their services.

Mr. Cameron is the Chairman of the Board of Directors and is also the Chief Executive Officer of the Company. A chief executive officer, who is included in the day-to-day administration of the company, must surely find himself in an unusual situation when sitting as a member of the Board of Directors. He is appointed to the position of chief executive officer by the other Directors. He owes his job to them and is, in a sense, subordinate to them. At the same time, he is in a position to exercise an unusual influence over the other members because he is the one with the first-hand knowledge of the operations of the company. As a member of the Board, he helps determine company policy and as its chief executive officer he is charged with the responsibility of carrying out this policy. Furthermore, as Chairman of the Board he presides at Board Meetings and has general supervision, direction and control of the business and affairs of the corporation. In my opinion, a strong case exists for the separation of the function of determining policy on the one hand and carrying it out on the other. Policy and management functions should be separated in order to avoid any possible conflict of interest.

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Mr. Reynolds, as the Company's General Manager, must also find himself in the same conflict of interest position. He is an employee of the Company and is appointed to his position by the Board and is answerable to a Board of which he himself is a member. His position with the Company requires him to bring management proposals before the Board and report to the Board on the Company's activities. He is then required to vote on his own proposals and to evaluate the Company's performance. The result is that he is one of the persons ultimately deciding on the adequacy of his own performance and whether or not his own recommendations should become company policy.

While the proven management experience and ability of both Mr. Cameron and Mr. Reynolds cannot be questioned, the separation of policy and management functions is of such importance that neither of these men should serve on the Board of Directors.

RECOMMENDATION #4

THAT no person directly involved with the determination of policy or the responsibility of management, with the exception of the Company President, be elected to sit on the Board of Directors of the Company.

C. The Executive Management

The Company employs six executive officers and the following persons presently fill the respective offices of:

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Chairman of the Board and Chief Executive Officer	-	A.D. Cameron
Company President	-	R.W. Smith
Vice-President and General Manager	-	J.H. Reynolds
Assistant General Manager	-	J.L. Boomhower
Secretary-Treasurer	-	D.K. McKenney
Assistant Secretary-Treasurer	-	H.B. Curtis

The following three department heads report to Mr. Reynolds, the Vice-President and General Manager:

J.L. Boomhower	-	Assistant General Manager in charge of the Transmission and Distribution Department
P.H. Newcombe	-	Assistant General Manager in charge of Production
D.K. McKenney	-	Finance and Customer Service

The qualifications of Company officers and department heads were examined. All have extensive experience in the field of engineering and/or administration as it relates to the positions to which they are respectively assigned and the evidence clearly indicates that the Company is organized to run efficiently and is effectively managed.

Maritime Electric Company, Limited is comparatively small in size and services approximately 42,500 customers, 42,014 of whom are distributed over an area of 2,180 square miles. This scattered clientele naturally increases operating costs. To service these

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42,500 customers, 190 people are employed and this works out to an average of approximately one employee for every 214 customers. This is a heavier workload than is found in other electric utilities I have examined. Newfoundland Light & Power, for example, has one employee for every 120 customers, and the New Brunswick Power Commission has one for every 115 customers. Maritime Electric's record in this respect is a commendable one. Excessive overtime is obviously monitored very closely, as is attested by the fact that, in 1981, the total payroll of the Company increased by only 4 percent.

Eighty percent of the employees of the Company are covered under the terms of a collective agreement and the relationship between management and labour appears to be satisfactory. There has been only one serious interruption of work over the past several years due to a strike and no evidence was presented to indicate any labour unrest at the present time.

In effect, therefore, I am able to conclude that personnel management is performed in a satisfactory manner and there is every indication of good employee relations, performance and productivity.

With respect to the higher echelon within the Company, salaries of officers are considered to be private and confidential. Information with respect to this matter was not volunteered during the Inquiry and I did not ask for it. One of the Commission's consultants, Mr. L.W. Anderson, was able to glean from the Company records available to him that, in 1980, the average annual salary of four of the

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officers for that year was $44,790 each. This figure did not appear to me to be out of line with what could be expected to be paid for men with the experience and qualifications of the four officers mentioned, and for that reason I did not press for information considered to be private and confidential. I should mention again that Maritime Electric made no effort to hide anything from the Inquiry. All preliminary information I asked for was freely and voluntarily provided and all Company witnesses gave their evidence under oath and in a frank and forthright manner. The Chief Executive Officer, Mr. A.D. Cameron, for example, was subjected to vigorous and detailed cross-examination by Commission Counsel, Mr. Jenkins, for the better part of four days and I was very favourably impressed with the way in which he conducted himself. This same observation applies to all other Company witnesses.

As I mentioned above, Mr. Anderson was commissioned by me to conduct an independent, organizational review of the Company's present executive management structure. His report to me is that the Company:

(a) is organized to achieve operating efficiency through clear lines of communication and chain of command;

(b) is staffed by officers and senior managers who are both qualified and competent;

(c) is controlled in such a way, particularly through its operating and capital budget systems, as to achieve operating objectives;

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(d) has its basic systems and procedures well documented and in use;

(e) is presently utilizing computerized information processing to produce additional internal management control reports and has a systems development plan to computerize additional information for better internal control;

(f) has the advantage of being small enough in size so that its Chief Executive Officer and its management group are easily accessible to each other and are thus able to provide better than normal communications.

In the light of this very favourable report by a well-qualified and completely independent expert in the area of organization planning and management development, it is admittedly with some hesitation that I recommend any change in the organizational structure of this Company. There is one, however, which I feel should be made and in recommending it I want to make it perfectly clear that it in no way reflects on the integrity of the man who presently holds the position, nor does it reflect on his acknowledged ability or his strong sense of commitment to the goals of the Company.

Mr. A.D. Cameron is presently Chairman of the Board of Directors and also holds the position of Chief Executive Officer of the Company. As the Inquiry progressed it became increasingly evident to me that

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the major control of the Company rests in the hands of Mr. Cameron. Very few major decisions are made by the Board of Directors without his prior direction and approval and he is very much in the forefront in influencing most of the important decision making.

With respect to his position with Maritime Electric, Mr. Cameron's own evidence is:

> " My services are provided by Montreal Engineering Company Limited to Maritime Electric Company, Limited on a cost plus percentage fee basis charged on the number of hours I actually work in the service of Maritime Electric."

As I will explain later in this report, Montreal Engineering provides policy consulting, financial planning, capital forecasting, engineering and management consulting, legal, accounting, and purchasing services to Maritime Electric. In 1980, for example, Maritime Electric paid Montreal Engineering a total of $657,500 for these services. Mr. Cameron is a paid employee of Montreal Engineering; he has been its Vice-President since 1972 and he owns 1 percent of the shares of its parent Company, Monenco Limited, and has been a Director of that Company since 1976. Last year, Maritime Electric paid Montreal Engineering $48,500 for the services he rendered to Maritime Electric as its Chief Executive Officer, and this even although he spent only one-third of his time with the utility. The cost would appear to be excessive relative to the time spent but the cost of these services is not my objection to Mr. Cameron's employment as Chief Executive Officer.

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Before a contract of any of the services noted above is awarded to Montreal Engineering, it must first receive the approval of the Board of Directors of Maritime Electric. Mr. Cameron is Chairman of that Board and, in effect, he is considering the advisability of awarding a contract, in many cases involving a substantial amount of money, to his own employer and to a company in which he is presently the Vice-President. While he assures us that he does not vote when it comes to deciding whether or not the contract should be awarded, he does take part in the discussions leading up to the vote and it is difficult for me to conclude that his advice on the matter would not carry a great deal of weight with the other members of the Board. It is equally as difficult for me to conclude that he would try very hard to convince the Board that a contract for services involving thousands of dollars on an annual basis should not be awarded to his own employer.

When the contract for any of the above services is awarded to Montreal Engineering, the contract is monitored by Maritime Electric personnel to make sure that the services are performed satisfactorily. The personnel monitoring the contract must then report back to Mr. Cameron in his position as Chief Executive Officer but who is at the same time an employee of the firm performing the contract. The potential for conflict of interest is so great that, in my opinion, a change should be made.

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RECOMMENDATION #5

THAT as long as Montreal Engineering continues to supply services for a fee to either Maritime Electric Company, Limited or Maritime Electric (P.E.I.) Limited, neither the Chairman of the Board of Directors nor the Chief Executive Officer of either of these companies should be an employee, an officer, a director, or a shareholder of either Montreal Engineering or Monenco Limited.

While it is recognized that the Company is organized to run efficiencly and is managed effectively, it will be noted that three senior managers - Messrs. Cameron, Smith and Reynolds - are employed to give directions to three departmental heads - Messrs. Boomhower, McKenney and Curtis. I am in agreement with Mr. Anderson that this "one-on-one-on-one arrangement" is indeed top heavy and may be contributing to excessive management costs. In a company this size, three people at the senior level are not needed to supervise three department heads. While Mr. Anderson acknowledges that the services of Mr. Cameron are on a one-third of the time basis only, and that Mr. Smith is on partial retirement and doesn't carry out all the duties ordinarily performed by the president of a corporation, he nevertheless observes that:

> " From an examination of the three senior people referred to here and their interface with the three department managers, there is an appearance that there is a top heavy arrangement with possibly some redundancy, and that is the reason for

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suggesting here that structurally you don't really need three people in a one-on-one-on-one relationship in order to be effective."

RECOMMENDATION #6

THAT the Public Utilities Commission examine this one-on-one-on-one relationship and, if found to be contributing substantially to the cost of management, a change be authorized.

D. The Purchasing Practices of Maritime Electric

The present practice of the Company is to purchase major items for generation, transmission and distribution purposes through Montreal Engineering and from a list of selected suppliers recommended by that Company. The selected list usually comprises from three to five suppliers with whom Montreal Engineering has previously dealt and whom it has always found to be satisfactory.

In his testimony, Mr. Cameron confirmed this method of purchasing and defended the practice of buying through Montreal Engineering from a selected list rather than by open tender. He is adamant in his opinion that this is the better way to go and that by following this practice you save the expense involved in advertising for tenders and then being required to approve the competence of those who have submitted the tenders to determine if they are qualified. Mr. Cameron was asked:

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Mr. Jenkins: In your purchasing practices, do you ever go for public tenders or, when you do tender, do you always tender on a private list?

Mr. Cameron: For Maritime Electric, we always tender on a selected list of bidders.

Mr. Jenkins: There's never situations for public tenders?

Mr. Cameron: No. We feel it is more efficient on a selected list.

Mr. Jenkins: And does that same rule apply whether the purchase is done by Maritime Electric or by Montreal Engineering on behalf of Maritime Electric?

Mr. Cameron: Yes. Our purchasing procedures lay down guidelines for levels of orders where tenders must be called from at least three tenderers where available and in other cases where, for very small and very low value items, items can be purchased after obtaining a quotation and determining that it is competitive.

Mr. Jenkins: Do you not feel the same responsibility that Government would feel to get the best price?

Mr. Cameron: No. To get the best price, yes. But we feel that buying relatively complicated electrical equipment that the way to get the best price is to select your bidders and go only to the people that you know will provide you with a satisfactory product. A government on the other hand is forced by its very nature to

> continually demonstrate to the people that their purchasing is open to everybody.

Although Mr. Cameron assured me that purchasing by selective bidding is an accepted practice in the investor-owned electrical generation business, I am not convinced that it is a practice which should be followed by Maritime Electric. Under this practice the purchaser can never be sure that he is getting the best possible price for a similar product of equally good quality. Although the reputation of the supplier is important, price is also a very important factor and particularly so when the price is passed on to the ultimate consumer who in this case, is the purchaser of electric power. I am of the opinion that, from the standpoint of fairness and economy, it is better to use a more open bidding system. Certainly, a decision as to who will be on the bidders list should not be made by Montreal Engineering but rather by Maritime Electric.

I am of the opinion that it would be in the interest of electric power consumers of Prince Edward Island to have all purchasing activities of Maritime Electric carried out in Prince Edward Island with appropriate consideration being given to goods and services being obtained in the Province whenever economically feasible. I consider that public tendering process should be followed except in emergencies, to ensure that the best possible value is obtained in each instance. All purchasing decisions should be made by Maritime Electric and not by others.

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RECOMMENDATION #7

THAT for the purchase of equipment involving a cost in excess of Ten Thousand Dollars ($10,000) the practice of selective bidding be discontinued (except in emergencies) and be replaced by the public tender system.

It was also discovered during the course of the Inquiry that Maritime Electric is tied to an Agreement whereby it is required to obtain the following services from Montreal Engineering: policy consulting; managerial; legal; financial and capital planning; accounting; load forecasting; purchasing; general construction (engineering and project management); and engineering work orders. This Agreement is for a term of five years but continues on a year to year basis thereafter and can only be terminated by Maritime Electric on two years' prior notice.

The Agreement provides that if any of these services are required by Maritime Electric from outside its own organization, "it shall request Montreal Engineering to supply such services" (emphasis mine). Maritime Electric agrees to pay for these services at a rate detailed in a Schedule attached to the Agreement and it is further provided that it:

> " ...shall be effective on the 1st day of July, 1978 until the 30th day of June, 1983, and from year to year thereafter unless either party shall have given written notice of termination to the other at least two years prior to the

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30th day of June, 1983, or to the same day of any subsequent year."

It should be noted that, under this Agreement, Maritime Electric is excluded from obtaining the designated services from any other supplier without the consent of Montreal Engineering and is therefore prevented from going out into the marketplace to determine whether or not similar and equally as good services can be obtained from other competent firms at a better price. While the competency of the service provided by Montreal Engineering is not being questioned, I am far from convinced that it is the only company in Canada that can provide equivalent services. While there is no suggestion that there has been any impropriety with respect to these purchasing arrangements, there is also no evidence that money is saved by following this practice. Maritime Electric maintains that Montreal Engineering, because of its size and its purchasing resources and volume buying, can effect the best deal. That may very well be so, but there is no way of knowing for sure until it breaks away from this contract and tries somebody else. It is indeed a lucrative business for Montreal Engineering as can be seen from the following amounts paid to them:

1979	-	$ 603,551
1980	-	657,509
1981	-	705,279
		$1,966,339

During the course of the Inquiry, we also learned that it is Maritime Electric's policy to deal exclusively with F.A. Tucker Limited for installation and repairs of major transmission and distribution lines. Again, no bids are called for and there is no confirmation that Tucker's price is the best obtainable for equally good services. This is also a very lucrative business for Tucker's:

1975	-	$ 428,082
1976	-	969,847
1977	-	888,504
1978	-	409,662
1979	-	463,762
1980	-	1,110,015
1981	-	430,952
		$4,700,824

This matter of the exclusive use of F.A. Tucker Limited as a line construction contractor was strongly defended by Maritime Electric witnesses, but I am of the opinion that while the long-standing arrangement offers a convenient and easy way by which Maritime Electric secures labour and equipment, it is clearly open to abuse. It is not an arrangement which should be permitted to continue. The exclusivity of the contract with one vendor (Montreal Engineering) and the exclusive use of the other (F.A. Tucker) either prohibits the Company from engaging others or discourages it from allowing others to compete in the market for provision of these services. This has nothing to do with the question of whether Montreal Engineering and F.A. Tucker Limited are the best qualified firms to provide these services. I

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simply question the sensibility of an exclusive contract with anyone on a long-term basis, for the annual dollars involved, which prevents possible cost-savings for equivalent service through Maritime Electric's own staff, or through competition from other firms supplying the same services.

I have no hesitation in condemning the exclusive arrangement whereby Maritime Electric must first go to Montreal Engineering for its consulting services. The exclusive clause in the contract prohibits the Company from engaging other consultants until it first asks Montreal Engineering if it is prepared to do the work. There are other competent providers of the services offered by Montreal Engineering but this exclusive arrangement prevents Maritime Electric from asking them to bid and deprives it of the advantage of ascertaining whether or not it is obtaining these consulting services at the best possible price. The exclusivity of the contract discourages even an attempt at buying at the best possible price.

Both the Company and the Public Utilities Commission has already been alerted to the fact that under this system the best possible price may not always be obtained. In August, 1981, CBCL Limited submitted an Earnings Base Review of the utility for the years 1978-1980. I quote from that Review:

> " Work Orders 283, 291 and 294 comprise 86% of the work done on the 138 KV transmission system during 1978-80 in dollar value. Although no single item could be singled out as excessively

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> expensive, the length of time required to complete these projects (particularly the Bedeque-West Royalty Transmission Line) appears to have resulted in costs which seem to be slightly higher than would be expected in work of this nature. The transformer for the West Royalty substation (Work Order 294) was ordered in 1974 but delivery was delayed (at MEC request) until 1980. It is possible that a better price would have been obtained by soliciting competitive bids for this transformer closer to the time of installation."(Emphasis mine)

There is now, of course, no way of determining what effect these exclusive franchises with both Montreal Engineering and F.A. Tucker Limited have had on the rates we have been paying over the years for our electricity. It is unfortunate that the Public Utilities Commission has not seen fit to condemn any arrangement whereby it is prevented from ascertaining with certainty that the users of power are not being penalized to the benefit of Montreal Engineering or F.A. Tucker Limited.

Under the existing contract with Montreal Engineering, Maritime Electric purchases from that Company services relative to policy consulting, financial and capital planning, capital forecasting, engineering, project management, management consulting, accounting and legal services. This practice has continued for quite some time at a cost to Maritime Electric which runs on the average to one-half million dollars per year.

In 1981, Montreal Engineering billed the utility for something

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in the area of 16,000 hours for the services of such people as a System Planner, System Protection Specialist, Senior Electrical Engineer, Electrical Draftsman, Assistant Secretary, a Financial Economic Analyst, and a Depreciation Specialist. The services of these people are contracted exclusively to Montreal Engineering and there is some evidence to indicate that they may be costing more than if they were performed by equivalent staff within the utility itself. While the evidence does not disclose the amounts paid to any one individual whose services were contracted for, we do know that in 1981 Maritime Electric paid $705,279 for these services and it is possible that at least some of them could be provided by local staff at a potential cost-saving.

Maritime Electric contends - and quite correctly - that none of the services now provided under the contract can be properly categorized as full-time positions and that, therefore, it would not be in the interests of economy to place people on staff to do this work. Mr. Reynolds maintained that for Maritime Electric to assume even 75 percent of the services which were performed last year by Montreal Engineering, it would be required to establish some 15 to 20 new staff positions. The projected workload, he says, is not sufficient to justify the hiring of that many people.

Mr. Reynolds is quite correct in his contention that the potential workload is not sufficient to warrant employing a person full-time, but what he apparently refuses to recognize is that much of this work, through a combination of functions, could be made full-time. Montreal Engineering, for example, provides Maritime

Electric with a System Planner for a total of 550 hours. While this certainly would not warrant a full-time employee, nevertheless the function of system planning could be combined with other related engineering responsibilities to comprise a full-time position. The same could apply to a System Protection Specialist. This, of course, is a highly specialized field and there would not be a sufficient volume of work in this area to consider the addition of a full-time person to the Company staff. But, again, this function could be transferred back to Maritime Electric and combined with other responsibilities to make a full-time job.

These combinations of functions, rather than the creation of new positions, was explained in detail by Mr. Anderson and it appeared to me as a potential source of saving money for Maritime Electric. I therefore asked the Board of Directors if it would consider the commissioning of an independent study to determine the feasibility of a change along the lines suggested. An outline of the terms of reference for this study was given to the Company and appears as Appendix 7 to this report. The following reply was received from the Company Solicitor following a meeting of the Board:

> " Given the Company's present policy of transferring work from Montreal Engineering to in-house Maritime Electric staff, wherever economic, the Board was of the view that, in the absence of any indication that a study of the sort described in the terms of reference would result in benefits, such a study would impose our customers to unnecessary costs.

> A study of the sort described in the terms of reference would be expensive and will tell us no more than is already known - that reliance on Montreal Engineering should be reduced by taking every opportunity to use Maritime Electric staff to perform work which is now being contracted out.
>
> The Board of Directors is unaware of any resistence on the part of Montreal Engineering to any transfer of responsibility to Charlottetown from Montreal."

This decision of the Board of Directors is a disappointment to me and, in my opinion, is just another indication of the Company's unwillingness to break the tie with Montreal Engineering.

RECOMMENDATION #8

THAT Maritime Electric immediately commission a study by an independent consultant with a view to determining the feasibility of transferring to in-house staff, by a combination of functions, as many of the consulting services now provided by Montreal Engineering as can be economically so transferred, and that the results of this study be submitted to the Public Utilities Commission as soon as received.

RECOMMENDATION #9

THAT Maritime Electric immediately discontinue its present practice of dealing exclusively with

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F.A. Tucker Limited for the installation and repair of major transmission and distribution lines and that, except in cases of extreme emergency, public tenders be called for all work of this nature.

RECOMMENDATION #10

THAT Maritime Electric immediately give to Montreal Engineering the required two year notice that it does not intend to renew the presently existing contract with that Company.

E. Merrill Lynch, Royal Securities Limited

Another practise to which I take strong objection is the one whereby the Company, without calling for competitive bids, employs the services of Merrill Lynch, Royal Securities Limited, as its underwriter for all issues of its preferred shares. This selection is made without any effort to determine whether or not another underwriter would be prepared to provide the same service at a smaller underwriting fee.

Since the Inquiry concluded its Hearings, for example, the Company placed for sale to the public an issue of 150,000 Cumulative Redeemable Retractable Preferred Shares to the value of $3 million. The underwriting commission paid to Merrill Lynch, Royal Securities Limited was $112,500.

The Public Utilities Commission held a public hearing before

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this issue was authorized and I have been provided with a transcript of the evidence presented at this Hearing. Mr. Michael A. Pavey, Assistant Vice-President of Maritime Electric, gave evidence and was asked:

> Q. Would you please indicate the method used in selecting an underwriter?
>
> A. The Company has selected Merrill Lynch, Royal Securities Limited to be its underwriter based on their familiarity with the affairs of Maritime Electric, their substantial involvement in the financing of investor-owned utilities in Canada, the quality of the financial consulting services provided by them on a continuing basis and the success that Merrill Lynch has had in placing the Company's securities within a reasonable time, even at competitive rates in particularly difficult markets. The Company evaluates Merrill Lynch's performance on an ongoing basis. This is done by reviewing the underwriting and agency fees paid by other companies, and the quality of the financial advice supplied. The Company has been consistently satisfied with the performance of Merrill Lynch, Royal Securities Limited.

It is interesting to note that the principal occupation of Mr. Alan S. Gordon, a Director of Maritime Electric and its largest individual shareholder (he owns 120,000 common shares) is listed in the documents presented to the Public Utilities Commission as "Consultant, Merrill Lynch, Royal Securities Limited".

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The record of the proceedings before the Public Utilities Commission does not indicate that it questioned whether or not any effort was made to obtain underwriting charges from any other company and I am at a loss to understand how the Commission satisfied itself that this was the best arrangement possible. I examined some of the other 1982 issues:

Issuer	Offering Date	Amount	Estimated Expenses Of Issue
Standard Trust Co. Ltd.	May	$ 10 million	$150,000
Consumers Gas Co. Ltd.	May	$ 50 million	$200,000
Nfld. Telephone Co. Ltd.	May	$ 10 million	$150,000
Seco-Cemp Ltd.	July	$ 23.5 million	$200,000
Stelco Inc.	July	$ 85 million	$300,000
Union Gas Ltd.	July	$ 50 million	$250,000

It will be noted that Consumers Gas Co. Ltd. was able to place $50 million on the market at an estimated cost of $200,000, whereas it cost Maritime Electric $112,500 to market $3 million. Newfoundland Telephone Co. Ltd. placed $10 million for $150,000. These costs indicate to me that possibly a better price could have been obtained by Maritime Electric if tenders had been called. There appears to be too cosy a relationship between Maritime Electric and Merrill Lynch, Royal Securities Limited, and I would therefore recommend the following:

RECOMMENDATION #11

THAT for all future issues of Maritime Electric Co. Ltd. securities requiring the services of an underwriter, the Public Utilities Commission

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require that there be competitive bidding before the services are engaged.

F. Conflicts of Interest and Interlocking Directorships

Many studies have been made with respect to conflicts of interest and interlocking directorships within Canadian companies and the majority opinion seems to be that there are dangers in such arrangements. There is no question but that, where conflicts do occur, the public interest is not always well served, and even if these conflicts are more apparent than real, they pose a problem of public trust. The present close ties of several Maritime Electric directors with the management of Montreal Engineering is a case in point and to get a clear picture of how this close relationship developed requires a brief historical review of Maritime Electric.

A study of the corporate history of the Company reveals that it was incorporated on June 27, 1917. At this time it was controlled by Associated Gas & Electric Company, an American holding company.

In 1918, the Company expanded its operations into Prince Edward Island by first acquiring the Charlottetown Light & Power Company. The Charlottetown Light & Power Company at that time held a monopoly for the supply to the city of gas and electricity for heating, lighting and motive power.

For some years prior to Maritime Electric's moving in and acquiring the Charlottetown operation, several small electric companies were engaged in the generation and distribution of electricity in

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various centres throughout the Province, notably Souris, Montague, Mt. Stewart, Pisquid, Cardigan, Murray River, Hunter River, Breadalbane, Victoria, Tryon, Crapaud, Freetown, Alberton and O'Leary. A hydro plant, with a capacity of approximately 140 KW, also served the Town of Kensington and its immediately adjacent areas. This was commonly referred to as "The Scales Pond Plant" and was a tribute to the foresight and business acumen of its founder, Mr. Austin A. Scales.

As the years passed and the use of electricity became more prevalent, all of these smaller companies found it becoming increasingly difficult and uneconomic to continue. One by one they sold out to Maritime Electric with the result that the Company acquired a virtual monopoly with respect to the generation, transmission and distribution of electric power throughout the whole Province. The Town of Summerside, let it be said to its credit, was the only area not to fall prey to this monopolistic acquisition and it is today the only area of the Province operating its own municipal electric system. In my opinion, the governments of the days when these acquisitions were being made by Maritime Electric were asleep at the switch in allowing a privately-owned utility to obtain a monopoly on this service. That, however, is now power through the line.

Up until 1937, the control of the Company remained in Associated Gas & Electric Company, but in that year it was purchased from Associated Gas by Mr. I.W. Killam and its common shares were owned exclusively by Mr. Killam until his death in 1955.

Mr. Killam was obviously a very investment-conscious gentleman

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and, in addition to Maritime Electric, he owned outright or acquired substantial interest in the following companies: Montreal Engineering Company Limited; Royal Securities Corporation (now Merrill Lynch, Royal Securities Limited); Calgary Power Limited; Mersey Paper Company; Newfoundland Light & Power Company Limited; Price Company; and International Power Company which had operating subsidiaries in Venezuela, Mexico, British Guiana, El Salvador, and Bolivia.

After the ownership of Maritime Electric was acquired by Mr. Killam in 1937, the Company continued to be operated by personnel who were with the Company when it was formed. Overall direction, however, came from Montreal Engineering by reason of its management of Mr. Killam's utility interests in Canada and elsewhere. This close relationship between the two companies continues to the present day, as is evidenced by the fact that Maritime Electric continues to obtain from Montreal Engineering the wide variety of services I have already mentioned.

Following Mr. Killam's death in 1955, his shares in Maritime Electric were owned by his widow. In 1964, Mrs. Killam offered a substantial block of these shares for sale to the public, with the provision that they were to be first offered "solely to residents of Prince Edward Island". This exclusive right to purchase by Islanders remained in effect for a period of six weeks and 42,438 shares were sold in this Province. 80,000 shares were later sold in the other Atlantic Provinces.

The records very clearly establish that, over the years, all

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of the senior management of Maritime Electric has consistently been provided by Montreal Engineering. Take a look at the record:

A.D. Cameron - He owns 1,200 shares in Maritime Electric. Chairman of the Board of Directors of Maritime Electric since 1978 and at the same time a Vice-President of Montreal Engineering since 1972 and one of its employees.
A Director of Monenco Limited.

H.B. Curtis - The present Assistant Secretary-Treasurer of Maritime Electric and at the same time Secretary-Treasurer of Monenco Limited, and Vice-President and Secretary of Montreal Engineering.

A.W. Howard - Presently a Director of Maritime Electric and also a Director of Monenco Limited. From 1971-1974 he served as President of Maritime Electric and at the same time served as a Director and Vice-President of Montreal Engineering and a Director and Vice-President of Monenco Limited.

V.P. Leahy - From 1973-1976 he served as Assistant Secretary-Treasurer of Maritime Electric and at the same time served as Assistant

Secretary-Treasurer of Montreal Engineering and Assistant Secretary-Treasurer of Monenco Limited.

C.F. Mallory - From 1974-1978 he was Chairman of the Board of Directors of Maritime Electric and at the same time a Director of Montreal Engineering, Vice-President of Montreal Engineering, Group Vice-President of Montreal Engineering, a Director of Monenco and Vice-President of Monenco.

F.C. Palmer - Secretary-Treasurer of Maritime Electric and at the same time Assistant Secretary of Montreal Engineering, Assistant Secretary of Monenco.

G.N.C. Rivington - He presently owns 500 shares of Maritime Electric. From 1980 to the present time a Director of Maritime Electric and at the same time a Director of Montreal Engineering, Group Vice-President of Montreal Engineering, a Director of Monenco and Vice-President of Monenco Limited.

D. Stairs - Chairman of the Board of Directors of Maritime Electric (1971-1974) and at the same time a Director of Montreal Engineering,

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Chairman of the Board of Directors of Montreal Engineering, a Director of Monenco Limited, and Chairman of the Board of Directors of Monenco Limited.

And what do we find today:

Name	Maritime Electric Relationship	Montreal Engineering/ Monenco Relationship
A.D. Cameron	A Director, Chairman of the Board and Chief Executive Officer	Vice-President, and employee, and a Director
A.W. Howard	A Director	A Director of Monenco
G.N.C. Rivington	A Director	A Director and Group Vice-President
R.W. Smith	President and a Director	A former employee of Montreal Engineering
J.H. Reynolds	Vice-President and General Manager	A former employee of Montreal Engineering
M.A. Pavey	Assistant Vice-President	Assistant Manager of the Management Consulting Division of Montreal Engineering

The evidence, therefore, very clearly establishes that over the years much of the senior management of Maritime Electric has consistently been in the hands of Montreal Engineering. Mr. Cameron

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himself says in his evidence:

> " You might say Montreal Engineering is hired by the Directors of Maritime Electric to run the Company for them." (Emphasis mine)

Mr. Cameron was examined very closely in an effort to determine whether or not Montreal Engineering actually controls Maritime Electric and I quote from the cross-examination:

> Commissioner: Well, is it your position, Mr. Cameron, that Montreal Engineering - let's settle it now - is it your position that Montreal Engineering has absolutely no control over Maritime Electric? Is that your evidence?
>
> Mr. Cameron: Sir, if control is the definition of financial control, Montreal Engineering has no control. Montreal Engineering has no corporate control of Maritime Electric. The subject of Maritime Electric would never be discussed at a Directors' Meeting of Montreal Engineering.
>
> Commissioner: Well, o.k., it has no corporate control.
>
> Mr. Cameron: You might say Montreal Engineering is hired by the Directors of Maritime Electric to run the Company for them.
>
> Commissioner: That's what I want to get, what type of control then? Montreal Engineering has some control; it has no corporate control. But what, if any, this is what I'm trying to get to the bottom line of. What, if any, control have they got?

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Mr. Cameron: Montreal Engineering has a professional responsibility to supervise the operation of Maritime Electric to ensure that it is operated efficiently.

Commissioner: But that's a different situation altogether. Professional responsibility. My question is, you say Montreal Engineering has some control. Now I want to know what control. That's all; never mind the professional responsibility. What control? We all know what we mean by control; that's what I want to find out. What, if any, control have they got?

Mr. Cameron: Control has a connotation which, let's say, is determined by its normal usage in the financial world. And control means the ability to direct the affairs of a company by virtue of ownership. Under that circumstances, Montreal Engineering has no control over Maritime Electric.

Commissioner: It has no corporate control; we've settled on that.

Mr. Cameron: Yes.

Commissioner: But, has it any other control of any kind over Maritime Electric?

Mr. Cameron: You might say Montreal Engineering is hired to supervise the management of Maritime Electric.

Commissioner : Am I safe in concluding then, that it has control over the supervision of the management of Maritime Electric?

Mr. Cameron: My problem is with the connotation of the word 'control', Sir. That's the trouble, because control has a specific meaning in the financial world which doesn't apply in the case of

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Montreal Engineering and Maritime Electric.

Commissioner: Well, let's get away from the financial world. I'm talking about the business world now - the operation of Maritime Electric. What control does Montreal Engineering exercise over the operation of Maritime Electric? That's really the crux of the whole thing, Mr. Cameron. That's the only point I'm interested in.

Mr. Cameron: It supplies certain personnel, and Montreal Engineering has the responsibility that, if one of us were to quit or get run over by a truck or put in jail, to supply somebody else to take our place. Now that is the, to my mind, the, that and providing us with the technical back-up and management back-up, expertise, that is the responsibility of Montreal Engineering. But Montreal Engineering has no responsibility for the primary management of Maritime Electric because that rests in the Board of Directors.

Commissioner: Has it full control over the supplying of technical expertise as you say?

Mr. Cameron: Yes, within the limits of the agreement which is subject to renewal on a five-year basis.

Mr. Jenkins: Mr. Commissioner, may I suggest that what you're doing is fine there. I just want to suggest that you refer to the agreement at this time with Mr. Cameron. The agreement does specifically set out the services there.

Commissioner: Where's the agreement?

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Mr. Jenkins: If you refer to Exhibit #64, page 315.

Commissioner: Where does this agreement deal with control? This is what I want to get at.

Mr. Jenkins: If you would refer, Mr. Cameron, to the services to be rendered by Montreal Engineering at page 316, page 2 of the agreement, Article I, Services.

Mr. Cameron: If I may interject, I think you've put your finger on it. On page 316, paragraph A, probably provides the Commissioner with a much better definition than the one I was trying to give him.

Commissioner: Yes, supplying such information and advice as the Directors of Maritime may require from time to time to assist them in setting the policies of the Company and guiding its operations.

Now, my question is, once that information or that guidance has been given to the directors of Maritime Electric, are they bound to follow it? Or have they a choice then whether they want to disregard it completely.

Mr. Cameron: Absolutely.

Commissioner: They have? So in that respect then Maritime Electric, Montreal Engineering exercises no control.

Mr. Cameron: To that, yes.

Commissioner: O.k. And does that same thing apply to all these subsections, right down along the line here?

Mr. Cameron: ...a lower level so you'll find this, the other services are provided not to the Board of Directors but either to the management or to the operating supervisors of the Company.

Commissioner: When the recommendation is made to management, we'll say, an operating supervisor, is he required then to follow it or can he disregard it entirely?

Mr. Cameron: Normally, these things work through channels. If, for instance, Montreal Engineering were to recommend against an item in the budget, which they often do, this then is discussed amongst us in the management of the Company, and normally we would see the logic of this and would agree to it. If we didn't, we would probably settle it amongst ourselves in the Directors' meetings about things like this.

Mr. Lea: Mr. Reynolds is whispering a few in my ear. Perhaps he could address that, too.

Mr. Jenkins: Sure, and, Mr. Commissioner, if Mr. Reynolds would like to refresh Mr. Cameron's memory, we can get an answer now if you want to speak for a moment together.

Commissioner: Well, I don't know why you want any more answer. This man says that Montreal Engineering exercises no control over Maritime Electric . Now, that's his sworn testimony. If you can establish for me that that is not correct and that Montreal Engineering is exercising some control, then that's fine. But this is the evidence I have so far, and he says it exercises no control over Maritime Electric. It took a long time to get around to that statement, but we finally got it. I don't know what took so long.

Mr. Jenkins: Well, surely, Mr. Cameron, the Board of Directors of Maritime Electric - the very essence of this agreement is that they rely upon, to some extent, they rely upon the advice given to them by Montreal Engineering, isn't that correct?

Mr. Cameron: Yes, that's quite correct.

Mr. Jenkins: And they pay good money for that service rendered?

Mr. Cameron: Yes, they do.

Mr. Jenkins: Right. So whether you have control or not, the people who they rely upon have a very substantial influence in the management of the affairs of Maritime Electric, isn't that correct?

Mr. Cameron: I think influence is probably a suitable word.

Mr. Jenkins: But you won't go so far as to say that there is any control at all.

Mr. Cameron: If you have a friend on whose opinion you rely, I suppose you could say you're influenced by him. If the Directors rely on advice from Montreal Engineering to that extent, they're influenced by Montreal Engineering.

Mr. Jenkins: When you render your services to Maritime Electric, you're doing so as a consultant who is employed by Montreal Engineering, isn't that correct?

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Mr. Cameron: Yes.

Mr. Jenkins: You are the person who renders the services in the area of policy consulting more than anyone else.

Mr. Cameron: Yes, but in that area, I seek advice from anyone who I think can help me on that.

While "control" may be too strong a word to describe the relationship between the two companies, I am satisfied that the relationship is indeed a very close one and today Montreal Engineering continues to influence the way in which the Company operates. With Mr. Cameron, Mr. Howard and Mr. Rivington sitting on the Board of Directors of Maritime Electric and at the same time either employed by or holding directorships in either Montreal Engineering or in Monenco, the matter of conflict of interest arises. With large contracts being awarded each year to Montreal Engineering, it is obvious that those closely connected with that Company, especially its directors and its shareholders, would be anxious to see that it gets as many of these contracts as possible. While the By-laws of Maritime Electric require any Director who may have a possible conflict of interest to immediately declare that conflict when a matter is before the Board and refrain from voting, and while I am confident that this is done, that in itself is not entirely satisfactory. The fact remains that they are present while the matters are being discussed and I find it difficult to satisfy myself that they would not take part in the discussions leading up to a final vote on the awarding of the contract and promote the interests of Montreal Engineering. I suggested to Mr. Cameron that

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the matter of interlocking directorships didn't appeal to me and I asked if he would consider consulting with the Board of Directors and ascertain whether the Board would be prepared to recommend the retirement of the Directors who are also Directors of Montreal Engineering. I was subsequently advised by the Solicitor for the Company that the matter had been brought to the attention of the Board and that:

> " It was the unanimous decision of the Board (the Montreal Engineering employees and one other abstaining) that it would not recommend the retirement of the Montreal Engineering directors, for these reasons:
>
> (a) It is the duty of the Board to recommend the election of those best qualified to sit on the Board;
>
> (b) The two remaining Montreal Engineering directors have much experience in the electric utility business by reason of their consulting with other electric utilities throughout the entire world, on which they are able to rely in advising the other members of the Board;
>
> (c) Both of the directors in question have long-standing knowledge of the operation of Maritime Electric and offer an element of continuity to the Board which is particularly useful with the recent increase in the number of Prince Edward Island directors. "

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I am not unmindful of the fact that the two Directors mentioned in the response are indeed experienced in their field and are making valuable contributions to the operation of Maritime Electric. The fact remains, however, that as long as they remain closely connected with Montreal Engineering, and as long as Montreal Engineering continues to supply services to Maritime Electric, the danger of a conflict of interest will remain. Perhaps the danger is more apparent than real but nevertheless it is there and is obviously a matter of concern to many of the customers of Maritime Electric. The services of Mr. Cameron and Mr. Rivington need not be lost to Maritime Electric because of their removal from the Board of Directors. If the newly constituted Board considered it necessary to consult with either of these gentlemen from time to time on a fee-for-service basis, it would be free to do so as occasion required. The main point is that they would not be part of the decision-making process when it was being decided whether a contract involving a large amount of money should or should not be awarded to a company in which they were interested as directors or shareholders.

RECOMMENDATION #12

THAT as long as Montreal Engineering continues to provide to Maritime Electric any of the consulting services it is now providing, no officer, director, or employee of Montreal Engineering should serve on the Board of Directors or occupy the position of an officer of Maritime Electric.

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G. The Financing Policies of Maritime Electric

The generation of electric power is an extremely capital-intensive operation and necessarily requires major investments in generation, transmission and distribution facilities. It is because of this that the importance of long-term planning by utilities engaged in the generation of electric power cannot be over-emphasized.

For the period 1971 to 1979, capital financing posed little problem for Maritime Electric. The sale of its Fredericton, New Brunswick plant in the early 1970's resulted in the Company having a good equity base. The Federal and Provincial Governments shared the cost of purchasing and laying the cable across the Strait in 1977 and it appeared at that time that the nuclear generating facilities at Point LePreau, in which Maritime Electric planned to participate by way of an entitlement interest, promised stable and relatively low cost generation. The Company felt confident that, with the rapidly escalating cost of oil, the LePreau facility would definitely be available to them on an entitlement basis and without any immediate large capital expenditure. Although the gross fixed assets of the Company increased from $28.5 million in 1970 to $59.5 million in 1978, the acquiring of the necessary capital to finance this expansion posed no problem. Sixty-two percent of the amount required was obtained from sources within the Company and the remaining 38 percent was easily handled through the media of a $3 million bond issue and a bank loan.

In mid-1979, however, the situation changed. The anticipated entitlement in LePreau was gone by reason of a dictum issued by the

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Government of the day and which the Company - quite wisely, I think - decided to abide by. While the Company at that time was under no legal obligation to go along with the Government order not to buy into LePreau, it was obviously fearful that, if it did not fall in line with the Government's decision, legislation might be enacted compelling it to do so. From the point of view of the Government's very strong opposition to participation in nuclear generated power, the decision of the Company was an advisable one.

Maritime Electric was then faced with the problem of securing another source of power and the purchase of an equity interest in the 200 MW Dalhousie #2 plant in New Brunswick was, in the opinion of the Company, the next best alternative. A 10 percent interest was considered necessary and this involved a capital expenditure of almost $20 million at a time when the economic climate was, to say the least, uncertain and interest rates were at a record high.

With a view to ascertaining whether or not, under the circumstances outlined above, Maritime Electric and its financial advisors conducted themselves properly, Mr. John O. Dean was engaged as a consultant to the Inquiry. Mr. Dean outlined for the Inquiry the following seven steps which would normally be expected to be taken in good financial planning:

1. Economic review and/or forecast.
2. Develop the system plan and alternative means of satisfying the requirements.

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3. Conduct feasibility studies and economic analyses to determine the least cost alternative.
4. Consider the impact on cash requirements and revenue requirements of alternatives.
5. Develop a capital budget and financial forecast.
6. Develop a financing plan.
7. Arrange financing.

Mr. Dean expressed himself as satisfied that all of these seven steps were taken, but that "the area in which it is possible to question the judgement of those concerned is in the area of financial planning and cash management".

The Company itself had stated its financial objectives to be:

1. A balanced capital structure as between debt, preferred stock and common stock. This balanced capital structure is designed to support the issue of additional securities at any point in time without distorting the capitalization of the Company.
2. Maintaining a satisfactory coverage on interest and on all fixed charges so that securities can be marketed.
3. A return on common stock at a rate sufficient to attract additional share capital.

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It would appear from the testimony of Mr. Dean that in 1980 the Company was barely meeting these objectives. He agrees, however, that at that time it was faced with a $20 million financing program for the purchase of the 10 percent interest in Dalhousie #2 and for which it appeared to be unprepared. In addition to the increase in capital expenditures because of this purchase, dividends required to be paid on both preferred and common shares were increasing and a bond issue was maturing and the net income of the Company was on the decline. Mr. Dean sums it up this way:

> " The Company could not do an equity financing without significant penalty to the shareholders because of the dilution inherent in a financing priced well below book value. The earnings decline, should an appreciable rate increase be denied, was an added deterent to an equity financing. Yet consideration of the capital structure almost demanded an equity financing before any other financing was arranged.
>
> This meant that a preferred stock issue was the only recourse if the capital structure was to be improved prior to the issue of debt. A preferred issue would also represent an additional fixed charge, and a reduction in the earnings available for dividends or to be retained. This would be in conflict with a need to retain earnings and to increase the dividend in order to improve the book/market value relationship.
>
> A debt-issue of any consequence was probably impossible without an increase in rates and an improvement in coverage ratios. It was probably also impossible without an improvement in

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> capitalization through either an equity or a preferred issue.
>
> A further factor with respect to a debt issue, which has not been referred to earlier or apparent in the tables, is the necessity for asset cover. The lowest cost debt because the most secure, is the 1st mortgage bond, and it has been the practice of the company not to issue unsecured debt. Until the Dalhousie purchase was completed and those assets could be pledged, the company was not in a position to arrange any debt issue appropriate to the size of financing which had to be arranged.
>
> If one adds to the above factors the fact that the capital markets were difficult throughout the period it is hard to imagine a worse position for the company to be in. Whatever conditions were correct to give the company financial flexibility, the company did not appear to have them. "

While there is evidence of some lack of financial planning from 1979 onwards, in fairness to the Company it must be acknowledged that it was not until late 1979 or early 1980 that it was suddenly faced with the unexpected financing of an almost $20 million capital project and that that financing had to be arranged over a very short period and at a time of difficult financial market conditions. Mr. Dean agreed in cross-examination that it could have been a disaster had there been an incompetent management. It is also to the credit of the Company that it was able to borrow some 16 to 17 million dollars by way of a bank loan at prime interest rates.

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The debt of the Company would appear to be well secured by Company assets and it would also appear that financing is done at rates as good as can be reasonably expected under the circumstances. In July of 1981, a total of $4 million was raised by the sale of preferred shares at an interest rate of 10 3/8 percent. In November of that same year, an additional $8 million was raised from the sale of bonds with an 18 3/4 percent interest rate.

At one stage of the Inquiry I was of the opinion that it might be to the advantage of the Company to have its borrowings guaranteed by the Province with a view to effecting a reduction in the rate of interest required to be paid. I am satisfied, however, that a provincial guarantee would not reduce the rate by any appreciable amount. While present debt service charges are admittedly large for a company this size, the cost of debt is being kept as low as can be expected under present conditions. Debt charges are still not a major component of operating expenses and the maximum reduction in interest rates that could be expected under a provincial government guarantee would be in the area of one-quarter of 1 percent.

RECOMMENDATION #13

THAT the Public Utilities Commission do what it considers appropriate to ensure that the Company's long-term financial planning procedures are adequate and that they are periodically updated and revised.

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H. Load Forecasting

It would appear to be true that, with respect to forecasting, there may be as many forecasts as there are forecasters. This became apparent during the Inquiry where we had forecasts of the future growth of electrical consumption being provided by Maritime Electric, Mr. K.J. Slater, and the Institute of Man and Resources. Incidental references to this subject were also made by others.

Maritime Electric tabled a Sales Forecast dated April 1, 1982 which the Company is using as the basis for its system planning. It consists of a detailed analysis and projection of electrical consumption in 6 major customer classifications. According to this document, annual growth in electrical consumption will range in the area of 1 percent to 2.26 percent annually in the period 1982-1996.

The preparation of a load forecast is, of course, the first step in determining the capital program or other programs which will be required to serve the electricity customers in the future. Included in the planning process must be a consideration of reserve generating capacity needed to enable rapid restoration of service in an emergency. Whether or not there is load growth it is still necessary to periodically examine the suitability of existing generating capacity and the economic effects of obtaining new resources.

Before reviewing the matter of the future expansion of the Maritime Electric system it is necessary to examine the present system.

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The present generation facilities of the Company are as follows:

Dalhousie Unit #2	20 MW (coal & oil fired)
Borden Gas Turbines	39 MW (oil fired)
Charlottetown	73 MW (oil fired)

One of our consultants, Mr. E.W. Major, P.Eng., conducted an on-site examination of these facilities and reported that all are constructed and maintained to acceptable utility standards by competent and well trained staff. In addition to the above, some 6 MW of standby power is provided by the Town of Summerside.

An interconnection agreement with the New Brunswick Electric Power Commission enables Maritime Electric to secure power over either one of two submarine cables under Northumberland Strait. Each cable is rated at 100 MW at 138 KV and each cable can transmit 105.4 MW for eight hours and 111.8 MW for twenty minutes. The agreement with N.B. Power permits Maritime Electric to purchase power and energy which are surplus to the needs of N.B. Power, this energy being transmitted to the cable over transmission facilities of N.B. Power. In addition, associated transmission facilities are used to transmit Maritime Electric's Dalhousie power entitlement to the Island.

On the New Brunswick side, the transmission facilities consist of a single circuit 25 mile long 138 KV transmission line from Memramcook to Murray Corner. Switching limitations at Murray Corner

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are such that several hours are required to shift the transmission connection from one cable to another.

In reviewing the constraints on the system, Mr. Reynolds noted:

> " Under the terms of the Interconnection Agreement between Maritime Electric and N.B. Power, we are required to maintain a 15 percent reserve capacity over peak. "

Mr. Reynolds observed that a 15 percent generation reserve was actually low by Canadian utility standards and that it represented a decline from the previous 23 percent reserve which Maritime Electric maintained before the cable connection to New Brunswick was effected. He stated that the basic reserve planning policy of Maritime Electric is as follows:

> " We consider that we should plan for the possibility that either our largest unit will be unavailable at any time or that the interconnection will be unavailable at any time but that both contingencies will not occur at the same time. "

The matter of the cable interconnection and its effect upon reserve capacity requirement was examined by Mr. E.W. Major and Mr. A.J.G. Leighton, albeit from a different perspective.

From an operational point of view, Mr. Major stated:

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> " One matter which is of concern to the operators, is the present design of the facilities in New Brunswick which serve the cable. In practice it would take some three or four hours to switch from one cable to another. This fact is undoubtedly responsible for the decision to maintain generating units on ready standby in Prince Edward Island, particularly in the winter time.
>
> It is not possible to quantify the cost of this standby but it appears relatively significant and is a matter which should be reviewed by the Company. I would recommend that a formal policy with regard to standby capacity be developed by the Company for the guidance of the operating staff.
>
> In addition, the Company should examine the feasibility of installing such additional facilities on the New Brunswick side of the cable to enable either of the cables to be utilized rapidly in case of failure of one of them.
>
> The cable is served by a single overhead line in New Brunswick. It would be most desirable from a security point of view to add a second overhead line and I gather that this matter is under consideration by the Company.

Mr. Leighton examined the matter of securing future power supplies from sources outside Prince Edward Island and noted:

> " In order to effectively purchase all its requirements from outside the Province, Maritime Electric would first have

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> to arrange to double the 138 KV transmission line from Memramcook to Murray Corner and upgrade the switching facilities at Murray Corner to provide for the immediate use of either or both cables as required. This would provide the degree of service security which I feel is desirable in this type of supply situation. "

The Dalhousie Agreement contains a provision which provides a pro-rata reduction in Maritime Electric's entitlement of power from Dalhousie in the event of a medium to long term de-rating of the LePreau nuclear unit.

The Interconnection Agreement as it now stands is a relatively short term agreement and provides for the supply of power to Prince Edward Island as and when available. I have referred to this in more detail in the section of this Report dealing with the Dalhousie Agreement.

It is therefore evident that under present arrangements it is not possible for Maritime Electric to dispense with the need of generating facilities on the Island, in particular the Charlottetown plant. In order to do so, the cable Interconnection Agreement would have to be re-negotiated. As things now stand, therefore, any future planning by Maritime Electric must recognize:

1. The need to maintain reserve capacity to the extent of 115 percent of its peak load.

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2. The possible de-rating of the LePreau plant in New Brunswick.

3. The possibility of a failure in the system either on the New Brunswick side or in the cable.

To some extent, Maritime Electric is at the mercy of N.B. Power with regard to future power supply. The only alternative to meet load growth would be to construct small and relatively inefficient facilities either on the Island or the mainland or to purchase power from Nova Scotia or Quebec which would have to be wheeled over N.B. Power's lines. Even in the lack of appreciable load growth, as will be discussed later, the present short term arrangements regarding the purchase of power from New Brunswick and the need to maintain reserve capacity must necessarily influence all future planning decisions.

I have referred to the load forecast (or sales forecast) which has been tabled by Maritime Electric and which forecasts a load growth of between 1 percent and 2.26 percent annually for the period 1982-1996. Evidence concerning two additional and independently constructed load forecasts was presented to the Inquiry. One was by Mr. K.J. Slater, the other by the Institute of Man and Resources.

Mr. Slater testified that he had assisted the Institute of Man and Resources in various studies in the period 1976 to 1980 and noted at that time:

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> " Maritime Electric's load studies were no more than forward projections of historic load growth trends."

On the other hand, the forecast of load growth which was used in the Montreal Engineering planning study of February 13, 1981 contemplated a load growth of 4 percent. Mr. Slater stated that:

> " Perhaps Maritime Electric could have started earlier than 1980 but we have to remember that Maritime Electric's revenue is relatively small, and one cannot spend huge sums of money researching aspects of the system when the revenue is that small."

Mr. Slater testified that in the period 1976-1980 the Institute of Man and Resources had completed a reasonable amount of basic research into residential energy consumption. When he was later engaged by the P.E.I. Energy Corporation he:

> " Extended the work of the Institute and started to combine the end use studies of the Institute with demographic projections to look at future loads."

For some reason the work done by Mr. Slater and the Institute in this 1976-1980 period was not communicated to Maritime Electric in a proper and comprehensive form. On June 21, 1982, Mr. Jim Lea of Maritime Electric commented:

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> " No, they gave us a very summary form, but they never completed it to the best of our knowledge in that final form until I believe that Mr. Slater began to use it."

In connection with the work for the Institute of Man and Resources, Mr. Slater testified that following completion of the residential energy consumption study it was necessary to analyze end use in the commercial and industrial area in order that a complete load picture would be available. Unfortunately any initiatives which he and the Institute wished to take in this area were thwarted by a refusal by the Chairman of the Public Utilities Commission to provide data. On June 21, 1982, Mr. Slater testified:

Mr. Jenkins: You made a comment on page 3 about two-thirds of the way down regarding the survey, you commented that the 'Public Utilities Commission did not approve of the type of analysis that we wished to perform'. What is the significance of that comment?

Mr. Slater: I thought myself that we with a little bit of ingenuity we could have overcome the problems of confidentiality involved in the non-release of the information we were seeking. However, I got the impression that it was just too much trouble and would we please go away.

Mr. Jenkins: This is the impression from the Public Utilities Commission?

Mr. Slater: Yes.

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Here we have a situation where the following groups were involved to some degree in the process of forecasting future electricity demand and consumption:

The Maritime Electric Company
The Institute of Man and Resources
The P.E.I. Energy Corporation
The Public Utilities Commission
Mr. K.J. Slater

In effect, the result was a non-forecast or at best a forecast which was deficient because it lacked necessary information. If, as Mr. Slater suggests, the matter of the confidentiality of the requested information could have been overcome, I must condemn the failure of the Public Utilities Commission to provide this information to the body most concerned, namely Maritime Electric.

With further reference to the matter, I questioned Mr. Slater as follows:

Commissioner: Mr. Slater, there has been a lack of action on the part of somebody insofar as load forecasting is concerned. What I am interested in is at whose doorstep can we place the blame for this? Is it at the doorstep of government, or the doorstep of Maritime Electric, or the Public Utilities Commission? Where does the blame lie? There has been some inaction, apparently, from what you say. But who is at fault?

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Mr. Slater: In a sense you might say that Maritime Electric is at fault because Maritime Electric has the franchise area, and therefore has the responsibility to provide for the load to the customers in that area. However, that's only on the paper idea of who should be responsible for it. Maritime Electric has been very closely associated with the Government of late in that it doesn't make major decisions without considerable discussion with the Government because of the impact on an essential commodity for the whole of the Island. So I would consider myself that it is mainly Government's responsibility to ensure that these forecasts are properly done, and that they coincide with provincial policy.

I am not in agreement with Mr. Slater's conclusion that it is the responsibility of Government to make sure that these forecasts are done. Government, or the appropriate government agency, should have an input but the ultimate responsibility must rest with the utility.

As a result of his work in Prince Edward Island, Mr. Slater testified that the load growth for Maritime Electric would lie in the range of between zero to 3.2 percent annually with the most likely figure to be 2 percent annually to the year 1995. This is in reasonable conformity with the Maritime Electric range of 1 to 2.6 percent. On the other hand, testimony provided to the Inquiry by the Institute of Man and Resources was that load growth in this

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period would be zero or even negative. Dr. K. Brown of the Institute testified as follows:

Mr. Lea:	And the only difference between your forecasts and Mr. Slater's then constitute differences in the assumptions that are built into your econometrical models.
Dr. Brown:	The economic activity and in the impacts of conservation on the efficiency of appliances, and on things such as the future use of electric water heaters, that sort of thing.

and later:

Mr. Jenkins:	Do you think that, based on your familiarity with Ken Slater's load forecasts, is there an appreciable difference which would be caused by his lack of paying as much adherence to conservation as you do?
Dr. Brown:	I think that's probably one of the key areas in terms of...
Mr. Jenkins:	Could that amount to 2 percent?
Dr. Brown:	Yes, if one includes that water heater I think it probably could.

Perhaps the whole matter can be summarized in the following exchange:

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Mr. Jenkins: I don't know nearly as much as you do about what you're questioning about, but I suspect that's what you're going to find is that Slater says you can't pay so much concern over conservation and therefore he doesn't. These fellows have taken hot water heaters right out by the end of the century. I mean electric hot water heaters. But I think it would help the Commissioner if you pursued your questioning and pass on the model.

Mr. Lea: Yes, let's wrap this up. There's a saying which begins, when doctors disagree...and I don't know how the saying ends, but at any rate. You will agree though, Dr. Brown, that if Mr. Slater's right in his forecast, then one of the fundamental premises of your argument is undermined, if he's right?

Dr. Brown: It would mean that we would need new capacity, yes.

Mr. Lea: Now are you able to say, on oath, that with your training as a chemical engineer and with your experience and knowing Mr. Slater's training and his experience, that you are qualified to say to Commissioner McQuaid that Ken Slater is probably wrong when he forecasts a 2% load growth?

Dr. Brown: I don't say that he was probably wrong. I'm simply saying that I have a different view of the matter based on my analysis and it's not uncommon for experts to disagree if we can classify both of us as experts.

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It is therefore obvious that load forecasting can be a subjective matter and forecasts may possibly be coloured by the attitudes and experience of the forecasters. This Inquiry is not charged with the responsibility of making a load forecast, or of deciding which one of several is the best. Suffice it to say that it is not possible to fault Maritime Electric for its forecasting, and I am sure that the results which it has tabled are the best which could be expected under the circumstances. Based on its knowledge of Prince Edward Island electricity trends, I would be inclined to accept its forecast as opposed to those of others, unless there were positive evidence to the contrary. In this instance, the detailed work of Slater confirms that the Maritime Electric forecast is in the right range.

Mr. Wells, of the Institute of Man and Resources, suggests that the P.E.I. Energy Corporation be given the responsibility for planning our future energy requirements. I must disagree with this suggestion. So that it always knows what is taking place, Government could have an input through the Energy Corporation but the prime responsibility and the ultimate decision must be left with the utility.

I am therefore satisfied that load forecasting, as carried out by Maritime Electric in the past, has been in accordance with established industry practice. Although the Company may have been somewhat tardy in introducing modern forecasting techniques, it was a party to studies conducted by others that did employ these techniques. Unfortunately, these studies were hampered by the refusal of the Public Utilities Commission to assist by providing requested data which was considered necessary to the study.

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RECOMMENDATION #14

THAT future load forecasting remain the responsibility of Maritime Electric and be subject to such review as the Public Utilities Commission may see fit to provide.

I. Purchase of All Power from Off-Island Sources

Once future loads have been forecast, the utility must then plan an economic program which will meet future requirements. This includes a look at generation, transmission, and distribution facilities, and an examination of all alternatives to determine their potential effect on rates.

Up until the late 1970's, all our power was produced in the Province. Now, however, over 90 percent of our requirement is purchased from off-Island sources and transmitted here over the cable, which has the projected capacity to handle all our requirements now and for the future.

However, in order to secure our power exclusively from the mainland, total reliance will have to be placed on the cable and the connecting facilities of Maritime Electric with those of the New Brunswick Electric Power Commission. The facility is described by Mr. P.H. Newcombe in his direct testimony as follows:

> " The complete interconnection consists of 25 miles of single circuit 138 KV transmission line in New Brunswick from Memramcook to Murray Corner, and a switching and cable oil

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> pumping station at Murray Corner, and two 3-phase 138 KV oil-filled cables across Northumberland Strait to another switching and cable oil pumping station at Richmond Cove. Schedules 48 and 48A are drawings of the cable.
>
> There are then two 138 KV single circuit transmission lines which run 6 miles from Richmond Cove to Bedeque switching station where they are tied into the Maritime Electric transmission system."

Each of the cables has a nominal capacity of 100 MW or, in other words, at this point in time one cable is capable of supplying all the needs of Prince Edward Island with some minor assistance from local Island generation at the time of the system peak.

Regarding the security of this arrangement, Mr. Newcombe's prefiled testimony notes:

> " Yes. As was stated earlier there is a risk to high levels in imports, because one transmission line from Memramcook to Murray Corner and one cable in operation is not considered a firm interconnection. If either of these lines should go out due to a fault, some sections of Prince Edward Island could be without power for several hours."

Mr. Leighton's prefiled testimony contains the following statement:

> " In order to effectively purchase all its requirements from outside the Province, Maritime Electric would first have to arrange to double the 138 KV transmission line from Memramcook to Murray Corner and upgrade the switching facilities at Murray Corner to provide for the immediate use of either or both cables as required. This would provide the degree of service security which I feel is desirable in this type of supply situation."

This matter is also referred to in the prefiled testimony of Mr. E.W. Major as follows:

> " In addition, the Company (Maritime Electric) should examine the feasibility of installing such additional facilities on the New Brunswick side of the cable to enable either of the cables to be utilized rapidly in case of failure to either of them.
>
> The cable is served by a single overhead line in New Brunswick. It would be most desirable from a security point of view to add a second overhead line and I gather that this matter is under consideration by the Company."

It is apparent that complete reliance on off-Island generating sources can only be achieved if the cable interconnection facilities are upgraded.

Upon completion of these upgraded facilities, Maritime Electric would have a number of choices open to it in respect of securing its

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power needs. These would include the following:

- Constructing generating capacity on the mainland.
- Purchasing firm capacity from Quebec, New Brunswick or Nova Scotia, or combinations thereof together with the lease or construction of transmission facilities.
- Securing ownership participation or equity in generating plants owned by Quebec, New Brunswick or Nova Scotia, together with the lease or construction of transmission facilities.

During the course of the Inquiry the suggestion was raised that Maritime Electric become a customer of the New Brunswick Electric Power Commission. This is in effect a variant of the purchase of firm capacity from that organization.

The construction of generating facilities on the mainland would hinge to a large extent upon the kind and cost of the fuel to serve such an installation. Currently, indigenous fuels are not in good supply and the pricing of such prospective fuels as natural gas is uncertain. In addition, the size of such a plant would be small by modern standards and must thus be relatively inefficient. For these reasons I am convinced that this is not an attractive option.

The logical choices therefore are concerned with purchasing firm capacity or securing some type of participation in plants owned or to be constructed by others. It is unfortunate in this regard

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that the bargaining position of Maritime Electric is relatively weak.

This is illustrated by the terms of the Interconnection Agreement between N.B. Power and Maritime Electric. In order to be able to purchase either firm capacity or ownership participation from N.B. Power, Maritime Electric was obliged to abandon the long term protection which it held under the original Interconnection Agreement in favor of a contract which could be abrogated on relatively short notice. In addition, it was obliged to pay a price for economy energy which Mr. Leighton stated would provide N.B. Power with:

> "...a handsome profit and I have referred to it as an excessive profit over the production cost."

In Mr. Slater's prefiled evidence in referring to economy energy purchases, he stated:

> " I consider that NBEPC has a very sweet deal. It has a captive customer for its surplus energy with an assured requirement and a high price, yet it has not contributed to the costs of the cable."

Mr. Slater goes on to state:

> " I believe that P.E.I. has suffered from its poor bargaining position in this matter."

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It is undoubtedly true that the action of successive Prince Edward Island governments within the last few years in demonstrating uncertainty with respect to the use of nuclear power and culminating in the cancellation of the LePreau Agreement, has not contributed to any feeling of generosity on the part of the New Brunswick Electric Power Commission and is not likely to aid future negotiations with that utility. Moreover, we cannot expect New Brunswick to export power to us without making a profit on it. It has put in larger units than is required for its own present needs and naturally wants to sell the excess capacity to help meet its own financing requirements.

Another factor which must be recognized is the fact that the Island plant still represents a considerable value in determining the rate base of the Company. If some extraordinarily cheap power became available from the mainland which would eliminate the need to keep the on-Island facilities in operation, the Public Utilities Commission could exclude these facilities from the Company's rate base. Because the earnings of the Company are regulated on the basis of a rate of return on earnings base, undoubtedly this move would cause a drop in the value of Maritime Electric's common shares.

One must bear in mind that the investment in the Island plant was made in good faith by the Company at a time when the investment was essential in order for Prince Edward Island to be supplied with adequate power. In my opinion it would be unfair to suddenly eliminate it from the rate base with the accompanying adverse results to the shareholders. Even if all our power could be obtained from off-Island sources, I could not recommend the complete elimination of the Island

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plant from the rate base. An alternative might be to allow depreciation to continue but freeze the rate of return allowed on the capital represented by its depreciated value. In other words, provide for a lower rate of return than on the capital invested on current capital facilities.

RECOMMENDATION #15

In my opinion, it is not practical at the present time to consider the purchase of our entire supply of power from off-Island sources. On-Island facilities are required under the terms of the present Interconnection Agreement and are also required for security of supply purposes. Studies relative to sources of supply sufficient to meet forecasted energy requirements should certainly continue. With an upgrading of the cable interconnection and the related transmission facilities, it may be possible to make an arrangement whereby all our requirements could be obtained from the mainland. In addition, it is not possible at the moment to estimate with any degree of accuracy what effect any such arrangement would have on Island power rates.

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RECOMMENDATION #16

THAT Maritime Electric negotiate with New Brunswick Electric Power Commission for a lower price for the power now being purchased and that the Prince Edward Island Government assist Maritime Electric in these negotiations.

J. The Purchase of an Equity Interest in Dalhousie Unit #2

In September, 1977, the underwater electric cable connection between Prince Edward Island and New Brunswick was commissioned into service, this installation consisting of:

2 - 3 Phase 138 KV cables under Northumberland Strait

25 miles of single circuit overhead 138 KV transmission line between Memramcook and Murray Corner, N.B.

2 - single circuit 138 KV overhead transmission lines between Richmond Cove to Bedeque, P.E.I.

Switching facilities at Murray Corner and Richmond Cove

The cost of the total installation was approximately $36 million which was funded as follows:

$18 million grant to P.E.I. by the Federal Government
$ 9 million loan to P.E.I. by the Federal Government
$ 9 million by the Province of P.E.I.

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Title to the interconnection is held by the Province of Prince Edward Island which has leased the facility to Maritime Electric for thirty years. At the end of thirty years Maritime Electric is entitled to lease the facility for $1 per year.

At the time the construction of the cable was committed, Maritime Electric entered into an Interconnection Agreement with the New Brunswick Electric Power Commission. At the insistence of New Brunswick Power, this Agreement was amended at the time of the purchase of the 10 percent entitlement in the Dalhousie Unit #2 by Maritime Electric.

During the period when these various Interconnection Agreements were being arranged, Maritime Electric, with the concurrence and assistance of the Government of Prince Edward Island, had been negotiating with N.B. Power for an equity purchase or entitlement of 30 MW from the LePreau nuclear plant. In 1975, the Government of Prince Edward Island withdrew from these discussions. During the next two years Maritime Electric continued with negotiating an entitlement agreement for 30 MW of LePreau capacity and energy. This agreement would have involved both the Province of Prince Edward Island and Maritime Electric with Maritime Electric assuming full responsibility for performance.

In December, 1977, the Government of Prince Edward Island indicated that it would not execute the entitlement agreement. However, Maritime Electric continued to work toward an agreement which would provide for an equity purchase of LePreau capacity.

In October, 1978, the Government of Prince Edward Island rejoined the negotiations which culminated in an agreement with N.B. Power for the purchase of a 30 MW entitlement from LePreau called the Nuclear Entitlement Agreement.

In June, 1979, the Government of Prince Edward Island advised Maritime Electric that it wished to withdraw from the agreement. Coincidentally, it advised the Company that nuclear power was not an acceptable source of energy for P.E.I. Maritime Electric then commenced negotiating for a non-nuclear supply under a government-imposed restriction that any acquisition of capacity be limited to 20 MW for periods in excess of five years.

N.B. Power placed certain conditions upon the cancellation of the Nuclear Entitlement Agreement, these being:

1. The re-negotiation of the Interconnection Agreement
2. The payment of the sum of $100,000

These conditions being met, negotiations for the purchase of capacity from N.B. Power were commenced. The first offer of capacity was for a 6-year period with a demand charge being based on Dalhousie capital cost and an energy charge based on N.B. Power's system cost. Maritime Electric elected not to accept this proposal and suggested that it be permitted to purchase an equity interest in Dalhousie. The Dalhousie purchase agreement, involving the acquisition by Maritime Electric of a 10 percent equity interest in the coal/oil fired 200 MW Dalhousie #2 unit, was concluded on August 24, 1981. Approval of

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the purchase had been obtained from the Public Utilities Commission of Prince Edward Island on April 14, 1981.

In reviewing the documentation surrounding the purchase of a 10 percent equity in the Dalhousie #2 unit, the technical advisor to the Inquiry, Mr. Leighton, reported as follows:

> 1. "In my opinion the decision by Maritime Electric to acquire an interest in Dalhousie Unit #2 is not attended by adequate documentation.
>
> 2. I consider that the financial analysis used to support the purchase was not adequate.
>
> 3. I am of the opinion that the ultimate responsibility for approval of the Dalhousie acquisition rested with the Public Utilities Commission which failed to exercise its statutory responsibilities in this matter."

With regard to the documentation required, Mr. Leighton listed six major items which he considered should have been obtained by a prudent purchaser making an acquisition of this nature as follows:

> 1. "An Engineer's report describing the assets to be acquired and certifying as to their condition.
>
> 2. A report outlining the operating experience with the unit and its auxillaries to the date of purchase.

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3. A list of warranties which apply to the various components of the unit and its auxilliaries and a legal opinion confirming participation in the benefits accruing therefrom.

4. A statement attesting to the insurance coverage and naming the purchaser as a participant.

5. A legal opinion regarding the tax implications of the purchase and if necessary an advance ruling from the Revenue Department.

6. A report regarding the availability and cost of fuel for the unit, copies of contracts relating thereto and estimates of the future cost of supply."

In reviewing the evidence adduced in respect of the Dalhousie purchase, I am drawn to the conclusion that while the Directors of Maritime Electric may have had information in respect of the data indicated by Mr. Leighton as being required, this was not available in any organized fashion. Rather, I get the impression that various bits and pieces of information were in the possession of various people on the Montreal Engineering payroll but that this was never consolidated into the type of recommendation to the Board of Directors of Maritime Electric which one would expect in normal commercial enterprise. A number of examples follow.

In Mr. Reynolds' testimony, he notes the participation of Montreal Engineering's mining division in a study of cost reserves in New Brunswick and states that:

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> "...during the course of that joint venture we came to know and understand N.B. Power's role in coal development in New Brunswick."

and later:

> "N.B. Power explained the contractual relationship between N.B. Power and N.B. Coal."

It is one thing to be knowledgeable of matters of this nature; however, it is my opinion that too much is left to chance if a Board of Directors approves a purchase based on verbal assurances in such key areas. Certainly, I share Mr. Leighton's opinion that regardless of the data in the possession of Maritime Electric, full data should have been presented to and scrutinized by the Public Utilities Commission. The latter was not provided with data concerning coal supply, nor did it bring the matter to question.

In reviewing the matter of the coal supply for Dalhousie, Commission Counsel asked the direct question of Mr. Reynolds:

> "What assurance does Maritime Electric have that Dalhousie will, in fact, be coal fired rather than oil fired?"

Mr. Reynolds responded:

> "I suppose the main assurance would be that the principal owner of the plant has invested some very considerable millions of

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> dollars in equipment to allow that plant to burn coal, that capital would be idle unless they do."

This would indicate to me a tacit acceptance of the infallibility of N.B. Power, a concept with which I cannot agree. Surely with all the resources and knowledge of Montreal Engineering at the disposal of Maritime Electric, someone responsible could have insured the production of a clear cut and unequivocal report dealing with fuel supply to Dalhousie and would have provided assurance that this supply could not be hypothecated in any manner which would be injurious to the interest of Maritime Electric.

Mr. Reynolds was asked the following question by Mr. Jenkins:

> "In connection with the Dalhousie unit, what warranties exist in connection with the various equipment, first of all the boiler?"

The response was as follows:

> "I couldn't be specific. I will simply say that in exploring that with N.B. Power we confirmed, if you will, that the warranties we would have looked on a boiler plant that we were buying or whatever were there."

A similar example of informality appears in the Minutes of the Board of Directors of Maritime Electric on March 26, 1981 as follows:

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> "Business Arising from Minutes
>
> Dalhousie (No. 2 Unit) Agreement
>
> Mr. W.G. Lea summarized the reasons why the New Brunswick Electric Power Commission is so concerned over the 'buy back' clause in addition to the Ownership Participation Agreement. Mr. MacMurdo asked if Maritime Electric had reports on file attesting to the resolution of the vibration problem that had been experienced with the Dalhousie No. 2 unit. Mr. Cameron replied that reports from both Montreal Engineering and Maritime Electric engineers showed that the problem will be resolved satisfactorily by the actions being taken by N.B. Power and the manufacturer, Brown-Boverie. Mr. Rivington also explained that the manufacturer is extending the warranty for one year (or longer if necessary)."

I must admit to having grave concern in respect of this apparent casual treatment of a serious matter. If there had been a complete arms-length relationship between Maritime Electric and Montreal Engineering I am sure that this type of informality would not have been permitted. In this case, the entire Board of Directors seemed willing to accept the verbal assurances of Messrs. Cameron and Rivington that a mechanical fault in the Dalhousie unit would be rectified. In my opinion this action was unacceptable and that this matter was inadequately dealt with by the Company's Directors.

Another instance is with regard to the insurance coverage on the Dalhousie unit and its auxilliaries. Mr. Jenkins reviewed with Mr. Reynolds the matter of insurance coverage and was referred to a letter from Fairweather's Insurance which forms part and parcel of the Dalhousie Agreement. However, on examination, this letter mainly

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confirms that insurance exists. The amount of coverage, expiry provisions, and deductible amounts are not stated. One can only assume that this information was not available to the Directors of Maritime Electric. However, it was definitely not available to the Public Utilities Commission.

With regard to Mr. Jenkins' questions as to whether or not Maritime Electric had obtained a report as to the operating history of the Dalhousie unit to the date of purchase, the following response was elicited from Mr. Reynolds:

> "The report prepared by some of our people who went with some representatives of Montreal Engineering to the site was reported to the Board of Directors. I don't know whether we circulated a piece of paper at the Board meeting."

The fact remains that from the review of the Directors' Minutes made by Inquiry Counsel, no mention is made of this matter so that it is likely that "a piece of paper" was not circulated at the meeting and that if any advice was provided it must have been oral.

In Mr. Newcombe's testimony, he offers the opinion that his assessment of the physical state of the Dalhousie unit was based on an ASME test carried out between March 19 and March 25, 1981. The report covering this test is dated May, 1981. A report on the condition of the Dalhousie boiler is dated July 2, 1981. However, it is obvious that by the time these tests were carried out the decision to purchase the Dalhousie equity had been made. The reports

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may have added to Mr. Newcombe's knowledge but they obviously did not receive any attention by Maritime Electric's Directors.

In his rebuttal evidence, Mr. Reynolds noted a number of analyses which he said had been done in connection with the Dalhousie unit and also referred to the ASME acceptance test which had been carried out. Mr. Reynolds stated that a detailed forecast of the effect of Dalhousie upon rates had been carried out before the purchase was made. However, the Minutes of the meetings of the Board of Directors of Maritime Electric are silent in respect of this important matter.

I can only reiterate that while adequate information in respect of Dalhousie may have existed within the Montreal Engineering - Maritime Electric organizations, no formal communication of these matters was provided to the Board of Directors. Everything was oral or informal and this seems to fit in with Mr. Reynolds' description of the Board's procedures when he says:

> "Frankly, Board meetings try to be free wheeling."

Mr. Reynolds' prefiled testimony outlines the type of engineering economic analysis which was performed by Montreal Engineering and which provided the basis for the purchase of equity in the Dalhousie unit. He stated that the basic criterion underlying the choice of one of several possible alternatives was:

> "...least lifetime cost to the customers consistent with good utility practice."

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The options studied by Montreal Engineering on behalf of Maritime Electric were described by Mr. Reynolds in his prefiled evidence as follows:

> "We chose three alternatives from among those with the lowest total present worths, of which the Dalhousie 2 equity had the lowest present worth. These three were:
>
> 1) the Dalhousie 2 equity;
> 2) the year by year firm purchase; and
> 3) the large slow speed diesel with heat recovery
>
> and they represented options quite different from each other."

In his prefiled testimony, Mr. Leighton took serious exception to the economic analysis used in respect of the Dalhousie purchase. He noted that the Montreal Engineering report of February 13, 1981 was suited:

> "...to make a preliminary screening of the various courses of action open to the Company in order to narrow the choice to two selections for further study."

He went on to outline the further work which should be carried out before a final selection of alternatives can be made noting:

> "...the key to this type of assessment is to be sure that annual costs are calculated over the lifetime of the program, as are the effects upon financing and rates."

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Mr. Leighton's opinion was supported by Mr. Slater who termed the Montreal Engineering study "insufficient".

I find myself in agreement with Mr. Leighton. Until the effect of an investment decision is related to rates paid by the power users, I cannot see how a proper job of analysis is done. This is highlighted by Mr. Reynolds' testimony in response to my question as follows:

> Commissioner: Yes, turned around. But how do those tremendous savings that you are talking about compare with the interest that we are paying on your $20 million that you borrowed to get into Dalhousie? Don't forget that we're paying that interest. How long is it going to take us, the consumers of Prince Edward Island, to recoup that from these figures that you have mentioned just now?
>
> Mr. Reynolds: The cross-over period is going to come in a very few years, Mr. Commissioner, very few years.

Primarily, a decision had been made to accept higher power rates in the short term as a result of the Dalhousie purchase in favour of lower average rates over the longer term. One would naturally assume that the quantified effects of this decision would have been carefully considered by the Directors of Maritime Electric and especially by the Public Utilities Commission. The transcript of the April 14, 1981 meeting of the Public Utilities Commission which approved the Dalhousie purchase made no mention of electric power rates. A meeting of the Public Utilities Commission held on February 18 or 19, 1981 approved

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the formation of Maritime Electric (P.E.I.) Limited but again, there is no record of the effect of the Dalhousie purchase upon rates, and indeed on those dates the financing of Dalhousie had not been settled hence it would not have been possible to consider any effect on rates. As Mr. Lea remarked during the Inquiry:

> "...the Dalhousie deal was far from certain until late spring or early summer (of 1981)."

Mr. Brennan attempted to explain how this important matter escaped the careful scrutiny of the Public Utilities Commission. However, I must draw the conclusion that regardless of the degree of sophistication of the economic analysis which may have been required, the fact remains that any decision to acquire capital by a utility must, in the final analysis, be related to rates. Any decision taken without a careful study of its effects on the power users is, in my opinion, deficient. I will refer to the participation of the Public Utilities Commission in this matter later in this Report; however, I was interested by Mr. Powell's response to questions put by Mr. Jenkins who stated that if he, as a Utilities Commissioner, had been faced with a purchase equivalent to that of Dalhousie:

> "No question about it, it would have been treated as a formal hearing."

and later Mr. Powell stated:

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> "Well, the reason is, of course, that it would have a very substantial impact on the revenue requirement of the utility in future years. Now, whether that is good or bad should be revealed before the approval is granted, whether it is going to add to rates, if so, how much."

One feature of the Dalhousie Agreement ties the availability of power from Dalhousie to Maritime Electric to the performance of the LePreau unit. In general, if the LePreau unit is de-rated for any reason for a lengthy period, the Maritime Electric entitlement to Dalhousie power becomes reduced pro-rata to the degree of reduction of LePreau output. Under such conditions, N.B. Power would make available capacity and energy under the terms of the Interconnection Agreement.

At the Inquiry the following exchange took place:

Mr. Jenkins: But I want to refer back to the Dalhousie Agreement where we've actually spent $20 million on it, or you have spent, now, and I want to see what this tie is with LePreau if I understand it. If LePreau is de-rated for any reason once it gets operating, for instance if the Atomic Energy, if the Commission decided it couldn't produce power, then it's theoretically possible that Maritime Electric would not be entitled to receive any power from Dalhousie at all.

Mr. Cameron: Yes, that's theoretically possible.

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Mr. Jenkins: But our $20 million would be stuck in there invested, and we couldn't get anything back out of it.

Mr. Cameron: That's right.

Mr. Jenkins: Well, that was an added risk, I guess, when you purchased Dalhousie that you took into consideration was it?

Mr. Cameron: It definitely was.

Mr. Jenkins: Did you include that risk in your financial analysis of Dalhousie?

Mr. Cameron: Yes we did.

But there were other risks associated with the Dalhousie purchase.

The Dalhousie purchase agreement includes a subsidiary agreement titled "Dalhousie Unit No.2 - Transmission Agreement". It is dated August 24, 1981. This agreement provides that N.B. Power will transmit Maritime Electric (P.E.I.) Limited's entitlement of power and energy from Dalhousie to Memramcook. In return, Maritime Electric (P.E.I.) shall pay a monthly rental charge for all transmission facilities involved. This rental charge is based on:

a) a capital charge based on the replacement cost of the transmission assets as of the date of the agreement;

b) a depreciation charge;

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c) an operating and maintenance charge;

d) a tax-related charge.

This rental charge is payable during the currency of the Dalhousie Agreement whether or not power is obtained from Dalhousie. Thus, in the event of a LePreau de-rating, the transmission rental charge would continue to be due and payable. Interestingly, in recent agreements negotiated by N.B. Power in respect of the purchase of participation in LePreau, except under special set of circumstances, the American purchasers are not assessed on transmission charge. This is referred to by Mr. Leighton in his evidence and by Mr. Roy Johnstone in his paper "Nuclear Power - An Option for P.E.I." It is also referred to in Mr. Slater's testimony.

In addition, in the event of a complete LePreau de-rating, Maritime Electric is responsible to pay certain other monthly charges including its share of operating and maintenance costs and an operators' fee charge.

Nowhere in the evidence before the Inquiry is an estimate provided of the quantum of those charges which would face Maritime Electric in the event of a LePreau de-rating. It appears doubtful that this was ever reviewed by the Directors of Maritime Electric or by the Public Utilities Commission as a single consideration. Maritime Electric claims that the possibility of a LePreau de-rating was taken into account in the cost calculations surrounding the purchase of Dalhousie. However, this appears to have been done in a most cursory fashion. Considering the fact that the LePreau unit

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is a new and yet unproven size of the CANDU configuration, I would have expected a more searching analysis of possible unavailability.

An interesting sidelight to this area of the Dalhousie Agreement lies in the fact that N.B. Power has recently covered some of its risks involved with the performance of LePreau by a sale of participation in the LePreau unit. I consider that under these circumstances a pro-rata reduction in the risk accepted by Maritime Electric in the Dalhousie Agreement should be negotiated with N.B. Power, again for reasons of fairness and equity.

Another matter concerned with the Dalhousie purchase is the matter of the negotiation of the Interconnection Agreement. The original Interconnection Agreement between the New Brunswick Electric Power Commission and Maritime Electric was dated October 26, 1976 and provides for the interconnected operations of the two utilities through the facilities commissioned in September, 1977 which I have referred to previously. The Agreement continues until December 31, 2007 or slightly in excess of 30 years from the date of commissioning the interconnection facilities. A supplement to the Agreement dated August 5, 1976 (revised January 6, 1977) provides that each party maintain generation reserves equal to 115 percent of its accredited demand.

At the time of the Dalhousie purchase agreement negotiations, N.B. Power required a re-negotiation of the Interconnection Agreement. Mr. Cameron's prefiled evidence contains the following:

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"Q. You referred to a new Interconnection Agreement with N.B. Power. Please specify the differences between the old and new Interconnection Agreements.

A. The new Interconnection Agreement (1981) differs from the earlier agreement (1976) in that the various forms of power and energy and the bases of charges for these have been included as Supplements to the Agreement subject to review and change on notice between the parties. In the earlier Agreement (1976) the clause covering costing formulae was in the body of the Agreement and governed by the thirty (30) year term certain of the Agreement."

The new Agreement is referred to in Mr. Leighton's testimony as follows:

"The Agreement provides that certain supplements to the Agreement may be terminated prior to the expiry of the Agreement as follows:

Supplement No.	Description	Notice Required for Cancellation
IV	Economy Capability and Economy Energy	12 months
V	Capacity Power	12 months
VI	Short Term Power	12 months
VII	Supplemental Energy	12 months
VIII	Planning Reserve	10 years

The main feature of the Agreement is that it covers various methods of interchanging power between New Brunswick and Prince Edward Island. Except in emergencies, it is optional; that is, it is

> entirely up to the vendor if he sells power over the interconnection or not."

The main difference between the old and new Interconnection Agreement lies in the term of the Agreement and the cancellation provision. The old Agreement was firm for 30 years. The new Agreement is for 30 years but certain features may be cancelled on shorter notice, as noted by Mr. Leighton.

It is a matter of great concern to me to see that this Agreement was amended with such apparent ease in view of the large financial commitments made by the Governments of Canada and of Prince Edward Island in respect of the construction of the underwater cables and the other interconnection facilities. Surely the Province as owner of the interconnection facilities should have been consulted and its approval obtained before the Agreement was amended. In my opinion the Public Utilities Commission which is responsible for the supervision of utilities should have thoroughly investigated this matter and should have ensured that the owner of the facilities was in agreement with any changes. It did not do so.

In addition there appears to be some basic misunderstanding by officials of Maritime Electric as to the implications of the Interconnection Agreement which may have contributed to a sense of complacency. On May 4, 1982, Mr. Cameron testified:

> "Now in this particular case, in other words the Interconnection Agreement can be our final backup. If we absolutely have to

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> get power from some other source, we can always get it through the Interconnection Agreement, but we have to pay for it."

And later:

> "There are classifications of power which we can buy which would be at least as firm as they would be to customers in New Brunswick."

The Interconnection Agreement itself states that in an emergency each of the parties:

> "...shall to the maximum extent it deems consistent with the safe and proper operation of its own system, with the furnishing of economical, dependable and satisfactory services to its own customers, and with meeting obligations to other parties make available generating capability in excess of its load requirements."

It is obvious that in an emergency Maritime Electric stands third in line for power from New Brunswick which first must satisfy its own customers, then "other parties" which are unnamed, and lastly Maritime Electric.

I now turn to the role of the Public Utilities Commission in the Dalhousie purchase. I have previously referred to meetings of the P.U.C. which were held in respect of this matter and I have made reference to the testimony of Mr. Powell. It is obvious that the

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Public Utilities Commission of Prince Edward Island did not have proper documentation before it when it approved the Dalhousie equity purchase. Mr. Brennan, who was Chairman of the P.U.C. at the time the approval was issued, testified that he held many discussions with officials of Maritime Electric and that as a result of these he considered himself to be well briefed on all aspects surrounding the purchase. However, in the final analysis Mr. Brennan testified that the issue of an Order in Council on April 2, 1981 precluded any further consideration of this matter by the P.U.C. When it was pointed out to Mr. Brennan that this Order in Council was pursuant to Section 6 of the Electric Power and Telephone Act which requires only an environmental approval, Mr. Brennan persisted in his opinion, although curiously, meetings of the P.U.C. regarding the Dalhousie purchase were held subsequent to the issue of the Order in Council. Mr. Brennan has testified that the purpose of these meetings was for the Public Utilities Commission "to cover ourselves".

The Dalhousie acquisition was primarily based on a report by Montreal Engineering of February 13, 1981 which has been characterized by Mr. Leighton and by Mr. Slater as being inadequate. This raises the prospect that with an adequate economic review of this matter it could well be that there was another course of action which would have provided a similar block of power at less cost to the power users of Prince Edward Island. Considering that a primary motivation of the Directors of Maritime Electric is to ensure the expansion of the Company's rate base it is obvious that the P.U.C. should have carefully scrutinized any reports purporting to justify a major rate base acquisition of this nature. This was not done and I must hold

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the Public Utilities Commission fully responsible for failing do do so. The apparently off-hand manner in which it handled the matter was not guaranteed to inspire confidence in Island consumers and illustrates the types of problems which gave rise to this Inquiry.

The acquisition of an equity interest in the Dalhousie #2 unit was obviously considered by Maritime Electric as a hedge against future escalation. However, the effect upon the power consumers of the Province was not studied in sufficient detail. Regardless of the motivation of the Directors of Maritime Electric, however, the inescapable fact is that the Public Utilities Commission of Prince Edward Island was created for the purpose of ensuring that capital acquisitions are made by the Company prudently and in the interest of the power users. The evidence clearly demonstrates that the Public Utilities Commission failed to exercise its responsibilities in this regard, and I am unable to accept the reason offered by its then Chairman for its lack of diligence in the matter.

K. Meter Reading and Customer Billing.

Under the present system, the Company employs a system of bi-monthly meter reading for all customers in the Province except those living in the Charlottetown rate area, where meters are read each month. With respect to those customers residing outside the Charlottetown rate area, the Company obtained the consent of the Public Utilities Commission to carry out an interim billing program under which consumption of electricity is estimated every second month and invoices rendered in accordance with these estimates. Maritime Electric explains that the reason for adopting this system

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was an economic one and realized a saving to the Company in 1981 of approximately $200,000. This saving, the Company maintains, automatically reacts to the benefit of the consumers. Had the $200,000 not been saved, it would be another revenue requirement which would have to be collected from the customers.

During Phase I of the Inquiry we heard many complaints with respect to this matter of estimating and many people expressed concern about the accuracy of the estimating procedures used by the Company. Many felt that the estimates were almost consistently high and that, consequently, they were being required to pay more than they should during the estimated months. While this over-payment would be reflected as a deduction in the following month, when the meter was read, the complaint was that the Company had the use of this money, without interest, for the month in question. In addition, many customers complained about the inconvenience caused as a result of these high and low billings.

As a result of these complaints, I ordered an independent study in an effort to determine whether or not there were any consistent errors in the estimating technique used by the Company. The following report was received in evidence under oath:

> "1. The study has shown to our satisfaction that there is no systematic bias in the MECL estimating procedure as was alleged at many public hearings. The system produces high and low estimates, in approximately equal numbers.

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2. No estimating system can be perfect. Annual weather variations, changes in customer's behaviour patterns, varying vacation periods, movement in and out of the labour force - all will contribute to variations in usage which are impossible to predict. The present equation used is very simple. Whether a more complex one, using more variables such as degree-days for the period being estimated, would provide more accurate results, is open to question but could be examined by the Company.

3. The study examined the records for only one month. There was no attempt to determine if the same individuals were being over-estimated over a long period of time. An analysis of the equation indicates that this could occur only if the customer was sharply reducing his monthly consumption over a period of many months.

4. No matter how sophisticated the estimating function, all that can ever be expected is that most of the estimates will approximate the actual readings. Because of extenuating circumstances, some very high estimates and some very low ones will always be produced. In conclusion then, the inaccuracy produced occasionally by estimating must be balanced against the extra costs that would be incurred if meters were to be read on a monthly basis."

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Although there have been occasions where estimated readings have not accurately reflected the actual amount of power consumed in a particular month, the report satisfies me that the estimating technique presently employed by the Company is reasonably accurate. If, as maintained by Maritime Electric, the present system results in an annual saving of $200,000, I cannot recommend a change in the present system as long as there is an automatic correction on the next month's bill.

The evidence heard during Phase I of the Inquiry establishes that there are cases where actual consumption is grossly overestimated and this results in a substantial overpayment by the consumer in that particular month. In such cases, the Company has had the use of the customer's money and the customer has suffered the loss of interest on his overpayment. Admittedly, it may not amount to very much for any one customer, but when all overpayments have been added together, it could amount to several thousand dollars. In my opinion there is no reason why the utility should have the use of even one dollar of a customer's money without being required to pay him interest on that money. If he happens to be only one day late in the payment of his monthly account, the Company will collect from him a delayed payment charge equal to 5 percent of the amount of his bill. The sword should cut both ways; if I must pay a penalty for late payment, then I must be reimbursed for the use of my money on an overpayment.

The Company estimates that the cost to it of reading a meter is $1.25 per month. While it may not be generally known, there is

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a procedure whereby you can read your own meter and report the reading each month on a meter card which is supplied by Maritime Electric. A sample copy of this meter card appears as Appendix 8 of this Report. The reading of a meter is not a difficult or complicated procedure and it is one which should be more widely used. Since the cost of reading this meter is estimated by the Company to be $1.25, the Company should surely be prepared to allow at least $1 to the customer who reads his own. Once again, it does not mean a substantial reduction in any one bill but, to all customers combined, it could mean a saving to them of many thousands of dollars per year.

With respect to billing procedures, the evidence is that the utility works on what is commonly known as a twenty-day billing cycle. A customer, for example, has his meter read on Day Four of each cycle and his bill is then mailed out approximately seven to ten days later. While this system provides an efficient and convenient method for the Company, it does present a problem for those on fixed incomes who receive their cheques on the last of the month. The power bill arrives about the 10th of the month; it must be paid within ten or fifteen days after receipt in order to avoid the late payment penalty, but the pension cheque doesn't arrive until the 27th or 28th of the month. This class of customer is entitled to special consideration.

At one time the Company maintained ninety collection centres throughout the Province where bills could be paid without any additional charge being made. These payment centres have now been

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reduced to three, and unless it is convenient for you to pay your bill at either the Summerside, Charlottetown, or Montague offices, you must either mail it in at a cost of at least 30 cents or pay it at your local bank or credit union at a cost of 60 cents. This very definitely is an injustice to those not living in either the Summerside, Charlottetown, or Montague areas.

RECOMMENDATION #17

THAT when monthly bills are estimated in excess of Twenty Dollars ($20) of actual consumption and the estimated amount is paid within the time required before the delayed payment penalty comes into effect, the Company be required to pay interest at prevailing bank loan rates on the overpayment.

RECOMMENDATION #18

THAT those customers who choose to read their own meters be rebated the sum of One Dollar ($1.00) for each month the meter is so read and that the practice of estimating readings be not applicable to them if the meter card is received by the Company on or before the 10th of that month.

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RECOMMENDATION #19

THAT for the convenience of its customers, the Company make the necessary arrangements whereby those residing outside the Summerside, Charlottetown, and Montague areas may pay their accounts at central locations and without any additional cost.

RECOMMENDATION #20

THAT for the convenience of consumers in receipt of Old Age Security, the Company give consideration to establishing a plan whereby their accounts can be paid on the last day of each month without the imposition of a delayed payment penalty.

L. Pole Replacement

During the Phase I hearings, many complaints were voiced with respect to power interruptions and the general feeling seemed to be that, for the most part, these interruptions were contributed to by a failure on the part of Maritime Electric to replace poles before they deteriorated to the point where they could not withstand a winter storm. Many people were of the opinion that the Company carried storm-damage insurance on its poles and deliberately allowed them to fall into disrepair so that they could be replaced after a storm at the expense of the insurance company. The Inquiry has determined that this is not the case. Company poles are not insured

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against damage by storm and when they are replaced, they must be replaced at the expense of the Company.

During Phase II we closely examined Company witnesses on the quality of the poles used throughout the system and the evidence is that they meet standard requirements when first put in place. It does appear, however, that in many cases they are not inspected often enough after installation to detect deterioration before it has reached the point where they cannot withstand a storm. I asked assurance from the Company that this situation would be corrected and Mr. Reynolds replied:

> "But, as I said, I have given you the undertaking the last time I was here and again this morning to make a thorough review of our approach to this and not, rather than go by lines, to do it as what we have described bearing in mind that it takes time and money."

I am satisfied that the Company recognizes the inconvenience caused to its customers through power interruptions, and I am prepared to accept the assurance of Mr. Reynolds that steps will be taken to keep these to a minimum where faulty poles are the cause.

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VII. ALTERNATE SOURCES OF ENERGY

In order to substantially reduce the cost of electric power to our consumers, it is obvious that one of our prime objectives must be to ultimately shift our dependence away from oil-fired generation to alternate and less expensive sources. Oil is a source of enormous financial leverage in the hands of the major oil-producing countries. Virtually all the OPEC producers, particularly those in the Middle East, are very clearly using their oil to pursue economic objectives and there is little hope that prices will go down in the immediate future.

With a realization that we in Prince Edward Island will always remain vulnerable to oil supplies and oil prices and with a realization, too, that oil is not a renewable resource, it is abundantly clear that careful consideration must be given to renewable and cheaper sources of energy. With a view to identifying and evaluating the alternate sources that might be available to us and assessing the feasibility of each of these sources, the Inquiry heard evidence from people experienced in this field. The following alternate sources were suggested to us and commented upon.

A. Wood-Fired Generation

While strong representations were made during Phase I of the Inquiry relative to the advisability and economic viability of establishing small wood-fired generation in different areas throughout the Province, the weight of opinion is to the effect that, at least for the present, no move should be made in that direction.

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While we have 600,000 acres of woodland in this Province, only 50,000 acres are owned by the Crown and could be immediately available for generation purposes. The remaining 550,000 acres are in the hands of approximately 14,000 owners, with the average ownership being in the range of 75 to 100 acres. While the wood is here, its availability is the question mark. It cannot be safely assumed that all the present owners would be prepared to sell. In Nova Scotia, for example, it has been established that 50 percent is all that can be safely considered as being available and there is at present nothing to indicate that the situation would be any different here. However, the feasibility of wood-fired generation as a supplement to our present generating facilities should not be entirely abandoned. This field, however, should be entered with a high degree of caution.

RECOMMENDATION #21

THAT an independent survey be conducted to determine the availability of a sufficient supply of wood at a price which would make it economically feasible to establish at least one 10 MW wood-fired generating plant in an area of the Province most accessible to the quantities of wood necessary to operate such a plant.

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B. Small Hydro Installations

Low-head hydro was recommended on several occasions and we were reminded that at one time the Scales Pond plant provided an adequate source of supply for the areas of Freetown and Kensington. However, the weight of expert opinion is now very definitely to the effect that the increased use of electrical appliances since the Scales Pond days renders it impracticable to depend on hydro generation. We don't have a Churchill Falls or a James Bay in Prince Edward Island and Dr. Kirk Brown of the Institute of Man and Resources told us that:

> "...if we were able to capture every single available drop of water in P.E.I., raise that water to a 20 feet head and operate at 100 percent efficiency, we could produce a total of only 6.885 MW of electricity."

On the basis of the evidence presented, I am not prepared to recommend any move in this direction.

Hydro generated power from the Province of Quebec is, however, a viable alternate and the possibility of acquiring energy from this source should actively be pursued by Government. Quebec has surplus power available and the only possible road-blocks would be price and the failure to arrive at a satisfactory arrangement with the New Brunswick Power Commission to transmit the power over its lines from the Quebec-New Brunswick border to the cable interconnection. Discreet negotiations with each of these Provinces should clear the way. No firm evidence was presented as to what the cost of this

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power would be but I am confident that it would be cheaper than present sources of supply.

> RECOMMENDATION #22
>
> THAT the Government of Prince Edward Island continue to negotiate with Hydro Quebec with a view to entering a long-term agreement for the supply of sufficient firm power to meet our future requirements.

C. Wind Generation

Wind has a number of characteristics which makes it an attractive future source of energy, the most important of which are that it is available and, after the initial capital expenditure, has a very low cost of operation. Research relative to this source is presently underway in this Province and it has been suggested to us that, by at least the end of this decade, wind may be playing a major role in providing us with a sizable portion of our electric requirements at a comparatively low cost. The wind test site at North Cape is now operating on an experimental basis and is generating small amounts of electricity and feeding it into the Maritime Electric grid. The Federal Department of Energy, Mines and Resources and the National Research Council continue to maintain a keen interest in the experiment and the idea certainly merits a close monitoring by the Government of the Province.

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RECOMMENDATION #23

THAT our Provincial Government and Maritime Electric give every encouragement to and closely monitor the experiments presently underway and, if found to be commercially feasible, the Government enter upon a long-range program designed to supplement by wind generation existing sources of electric power.

D. Natural Gas

Electricity generated by natural gas has been proposed as an alternative and both on-Island and off-Island generation has been suggested. The evidence indicates that natural gas is a highly subsidized commodity and would be only 15 percent less expensive than oil in the production of electricity. With respect to off-Island generation, Mr. Arthur J. Hiscock, the Acting Director of the Energy and Minerals Branch of the Provincial Department of Tourism, Industry and Energy, had this to say:

> "...I doubt very much if the Energy, Mines and Resources would permit natural gas to be used as a sole source of fuel for an electrical generation unit located in New Brunswick..."

Commissioner: Why do you say the Minister wouldn't allow it? Is that because of the shortage of gas? Is that the reason?

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Mr. Hiscock: Well, it is subsidized. No, not shortage, but the natural gas is very highly subsidized in that they are guaranteeing that, for example, at Halifax at the City-Gate price of Halifax would be 65 percent of the crude oil price of Toronto. So, in other words, we are being guaranteed in Halifax the same delivery price City-Gate as Toronto and that can only be done by injection of subsidies on the gas itself."

Mr. K.J. Slater, the President of Slater Energy Consultants Inc. of Toronto, and a recognized expert in the electric utility industry gave evidence at the Inquiry. With respect to these two alternatives, he was asked:

Mr. Jenkins: One is to have the pipeline, if it comes, extended under the Strait to P.E.I. And the other possibility would be to establish, to locate a natural gas station on the New Brunswick side and ship the electricity across. Do you have any comment to make on that?

Mr. Slater: I have not studied the economics of natural gas being bought for electricity production. However, the comments I have regarding that are that Nova Scotia and perhaps New Brunswick are contemplating burning gas in electricity production during the initial years of the pipeline to provide a load for the pipeline until the local load builds up.

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Mr. Slater: (cont'd.) Neither of them are contemplating the continued burning of gas for electricity production. I would understand from Federal Government policies that burning of gas for electricity production would involve a cost, if one did it continually, which would make the plant unsuitable for base load use. It could only be peaking use. Prince Edward Island doesn't need any more peaking plant. We need base load plant.

It therefore appears to be Energy, Mines and Resources policy not to make natural gas available for electric generation purposes in this area of Canada because of the heavy subsidization required. Despite this heavy subsidization, however, it apparently can be provided to us at 15 percent less than we are now paying for oil-fired generation. Even this 15 percent reduction would be well worthwhile. In view of the fact that the natural gas pipeline will quite likely be extended into New Brunswick, the Government of Prince Edward Island should continue to press hard for a generating unit on the New Brunswick side. The cable is already in place and it seems to me to be more logical to send the power across rather than extend the pipeline across the Strait. Granted, it would not make gas available to us for heating purposes but our chief need is relief from the presently exhorbitant and crippling cost of electric power.

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RECOMMENDATION #24

THAT when the natural gas pipeline reaches New Brunswick, the Government of Prince Edward Island approach the Federal Government with a proposal that, if feasible, it give substantial financial assistance to the construction on the New Brunswick side of a natural gas generating unit of sufficient capacity to supply the energy requirements of the Province and that an arrangement be arrived at with Maritime Electric whereby the power thus generated may be wheeled over the transmission lines to the consumers.

E. Nuclear Generated Power

During the Inquiry strong arguments were advanced by witnesses who favoured an entitlement by this Province in the nuclear generating plant at Point LePreau in New Brunswick and I am satisfied that, if the immediate cost of power to our consumers is the only consideration, then obtaining power from LePreau is the way to go. Richardson Associates Limited prepared and submitted to me a cost comparison of the "most likely" LePreau case as compared with the "most likely" case of remaining with the purchase of power from Dalhousie. The following figure, based on the supply of 20 MW of power for a period of thirty years indicates the difference in cost to the consumer:

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Cost for the first year of the entitlement

LePreau:	7.74¢ per KWh
Dalhousie:	8.80¢ per KWh

Cost over the 30-year period

LePreau:	11.04¢ per KWh
Dalhousie:	26.04¢ per KWh

For the first year of the entitlement the cost advantage is obviously not very significant and amounts to a saving of only 1.06¢ per KWh. Over the 30-year life of the entitlement, however, there is a very substantial saving due to the fact that the fuel required for the operation of the Dalhousie plant (70 percent coal and 30 percent oil) is prone to inflation, whereas nuclear power, fuelled by heavy water and moderated natural uranium, is not affected to the same degree.

In November, 1978, the then Government, obviously influenced by this cost-saving factor, entered into an Agreement with the New Brunswick Power Commission for a 5 percent entitlement in the LePreau plant. This Entitlement Agreement contained provisions which, according to testimony from former Premier J. Angus MacLean, had the following implications for the Province:

1. P.E.I. was to pay each year to the N.B. Power Commission a contingency charge equal to 1 percent of 5 percent of the total cost of placing LePreau in service. It now appears that the final cost of putting LePreau into service is in the area of $1.4 billion. One

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percent of 5 percent of that figure is $700,000. The Province, under the terms of the Agreement, would be required to pay this amount each year for the full term of 30-years regardless of whether the plant operated.

2. P.E.I. was to pay 5 percent of the monthly amount allocated for depreciation on the plant based on its projected life of 30 years. This amount would be in the order of $200,000, but if the plant had to be abandoned at any time within the 30 years, this depreciation charge would not have to be paid.

3. The Province would also be required to pay 5 percent of the interest charges on the net capital investment of the project. It is estimated that the cost to us would be in excess of $7 million per year and that amount would have to continue to be paid during any shutdown of the plant short of abandonment. In the event of a breakdown at the plant, New Brunswick Power was to have two years in which to decide whether or not to abandon the plant. If it decided not to abandon it, and there was a lengthy shutdown for repairs, we would be required to get our power elsewhere and probably at considerable cost. At the same time, we would be required to continue to pay 5 percent of the interest charges.

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4. In the event of abandonment, Prince Edward Island was to pay 5 percent of the cost of de-activating or dismantling the project. The common practice is to allow 1 mill per KWh as a decommissioning allowance. The effect of this approach over the 30-year term of the Agreement, assuming 80 percent capacity of the project, would be to build up a fund of approximately $210 million to take care of dismantling costs.

A change of Government in 1979 resulted in the cancellation of this Entitlement Agreement at a cost to the Province of $100,000. The New Brunswick Electric Power Commission also insisted that the then existing Interconnection Agreement be renegotiated. The new Government was of the opinion that, despite a reduction in power costs under the entitlement, other risks inherent in the Agreement were of such magnitude that it would not be in the best interests of the taxpayers to assume them. The largest unknown factor was the cost of decommissioning the plant should that become necessary before the expiration of this Province's 30-year entitlement. What would be the result to us if decommissioning had to be carried out after only 10 or 15 years of operation? At that time the decommissioning fund would not have reached the $210 million objective. High level radio-active wastes, potentially hazardous for 75 to 100 years, would have to be safely disposed of unless some method of re-processing it had been discovered in the meantime. Nobody knows for sure what these costs would amount to but, whatever the cost, Prince Edward Island would have to pay 5 percent of it.

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Another unknown factor at the date of the cancellation in 1979 was the actual cost of the plant. The Province was committed to pay 1 percent of 5 percent of that cost and the actual amount which would be required to be paid could not be ascertained with any degree of certainty. What started out as a $466 million project had already escalated to the billion dollar mark and was still climbing. The project, in fact, was finally completed at a cost in the area of $1.4 billion.

Also, although in all probability remote, there is the possibility of a catastrophic accident that could cause on-site damage to both people and property. The New Brunswick Electric Power Commission carries insurance against on-site damage in the amount of $359 million. This is the maximum amount that Lloyds of London will carry in the event of such an accident. If the damages exceeded this amount during the 30-year period of our entitlement, we would be required to pay our share.

In addition to the risks inherent in this Entitlement Agreement, we heard from witnesses who argued against nuclear generated power on the basis that the risks to the environment are too great and for that reason Prince Edward Island should not be involved. However, I am not inclined to give too much weight to that argument. Point LePreau will operate whether we join or not and our non-participation is not going to reduce any environmental dangers which may follow. Acid rain from a coal-fired plant could be equally as dangerous.

Up to the present time there has never been a proven fatality

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nor has there been a serious injury of any kind. There has, so far, never been a release of radio-active material from any of the ten nuclear plants presently generating more than one-third of the electricity used in the Province of Ontario. It has been a success story so far, and it is supplying power to Ontario consumers at a cost that we in this Province can ill-afford to pass up. All charges to us, which were contained in the now-cancelled 1979 Entitlement Agreement, except decommissioning charges, have been included by Richardson Associates Limited in its projected cost of LePreau power for a period of 30 years. I have no reason to question the accuracy of this estimate, and the savings are substantial. Decommissioning within the 30-year life of the Entitlement Agreement is, indeed, a risk but in the opinion of Dr. P.D. McTaggart Cowan, one of Canada's leading environmentalists, it is:

> "...an infinitesimal risk that I cheerfully accept for myself, my children, and my grandchildren."

While nuclear power may, indeed, be a high risk technology, the present extent of federal funding would indicate that the Government of Canada considers it to be an acceptable risk. The Atomic Energy Control Board, for example, assumes that if appropriate provisions for monitoring are built into a plan, safety will be assured. The industry, of course, is out to build the best possible product and its interest in safety is as great as the interest of anyone. It naturally has a respect for risk and can be counted upon to take all possible precautions to make sure that a dangerous product is not placed on the market.

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Dr. Cowan has had an opportunity to closely examine the development of the CANDU reactor and he says:

> "To my mind, the CANDU is the safest power producing device ever built. In concept, it is the simplest and most reliable reactor."

One of the main objectives of this Inquiry is to search out ways of reducing power rates. When nuclear energy is compared to other forms of thermal generation which depend on fossil fuels, the nuclear alternative looks attractive. The only thing remaining is to strengthen the ways in which questions of safety and health can be addressed. The main report of the Porter Commission on Electric Planning has this to say:

> "Because of the safety record of Ontario's nuclear power stations, more than 60 reactor years of operating experience during which no member of the public has been killed or injured as a result of a nuclear accident and because of the more than 1,600 reactor years of experience on a world-wide basis during which there has been no major release of radioactivity, we affirm our earlier finding to the effect that CANDU reactors are safe within reasonable limits." (Emphasis mine)

There is obviously an element of risk which, at the present time, it is difficult to accurately evaluate and it is for this reason that I do not feel that I should recommend an immediate entitlement in LePreau. Without some assurance similar to the one

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I am asking from the Town of Summerside in the event of a decommissioning, I feel that it would be in our best interests to hold off for the present.

At the moment we do not face a power emergency here. We have sufficient capacity for at least the next four or five years and at that time we will undoubtedly be in a better position to determine whether or not it is a risk which, as Dr. Cowan says, we can "cheerfully accept for myself, my children, and my grandchildren".

RECOMMENDATION #25

THAT the Government of Prince Edward Island continue to monitor the Point LePreau operation from the point of view of its performance and its safety with a view to the purchase by it - probably in the late 1980's - of a 5 percent entitlement in the power generated from its nuclear plant.

F. Conservation

At first glance it may seem unusual to include conservation in the discussion of alternate sources of power. However, it is in effect an alternative and is something that everyone can take part in by discouraging waste and improving the efficiency of all our energy consuming activities. To practice conservation does not mean that we must "freeze in the dark", nor does it necessitate a

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reduction in our customary standard of living. It means wise use. While practicing conservation will not reduce the cost per KWh that we will pay for electricity, it will reduce the total annual cost of energy paid by the consumers who choose to practice it.

The Institute of Man and Resources has made a special study of conservation measures that may be employed, and I quote in part from the evidence of Dr. Kirk Brown and Mr. Andrew Wells of the Institute:

> "Water Heating. Currently about 8 percent of Prince Edward Island's electricity production is dedicated to the heating of hot water for domestic and industrial uses. Opportunities for saving energy in water heating include: (1) improving the thermal efficiency of electric water heaters; and (2) substituting electricity with other supply, for example wood and solar systems. Adding 7.5 centimeters (about 3 inches) of fibreglass jacket insulation, for example, will reduce the energy demand for water heating by about 300 KWh per year but will raise the cost of the water heater by about $10. The use of a better insulator like urethane foam, however, will reduce energy demand in the electric water heater by almost 600 KWh per year for only a few dollars more. Note that a simple reduction in thermostat setting would cost nothing, and would save more than 300 KWh per year. A setback of 5.6°C (10°F) would not normally cause any discomfort. However, an even more attractive alternative exists for Prince Edward Island. More and more Island

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> residences and businesses are turning to wood as an energy form for space heating and the trend is forecast to continue. In almost all cases, such wood heating devices (kitchen ranges, air-tight stoves, and central heating systems) have the capability of providing hot water for domestic and commercial purposes. Solar system designed for seasonal use are, at present, the most cost-effective solar systems available. In combination with wood energy, significant electrical savings can be realized. For example, the average Island residence now relying exclusively on electricity for domestic hot water could effect 70 to 80 percent savings with combination wood and solar systems.
>
> Refrigeration. Refrigeration equipment can be considerably improved for energy efficiency. For the average Island consumer (consuming 6,000 KWh per year) refrigeration represents approximately 20 percent of the total annual electricity costs, or about $120 per year. If all domestic refrigeration were to be replaced with the most efficient system technically and economically feasible, this figure could be reduced to about 3 percent of consumption."

Other conservation programs are also possible without affecting the standards of living we presently enjoy and there can be no question but that efforts in the direction of conservation are well worthwhile. I can do no better than to encourage every possible move in that direction.

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VIII. PRICE STRUCTURING AND RATE DESIGN

Dr. John K. Stutz, a senior research scientist associated with Energy Systems Research Group of Boston, Massachusetts, was called by the Commission during Phase V at the request of H.O.P.E. environmental group.

Dr. Stutz stated the purpose of his testimony to be to review the Maritime Electric Company cost of service study and rate design procedures and, in particular, to deal with Maritime Electric's use of non-coincident peak based demand allocators in its cost of service study, as well as its use of a minimum system technique for distribution allocation. In the rate design area he dealt with the declining block structure (actual or effective) in the majority of Maritime Electric rates. He considered the role of load research data in cost of service studies and rate design.

While this Inquiry has attempted to investigate into all matters relating to the cost of electric power, it was recognized by all who participated in its proceedings, including Dr. Stutz, that the subject matter of his testimony is complex and that I would not, as a result of the testimony received during the Inquiry, be competent to make a recommendation that the relevant criteria employed by Maritime Electric be either maintained or amended. Determination of such matters is properly within and central to the mandate of the Public Utilities Commission. The purpose of Dr. Stutz's testimony, as stated by himself, was that the Inquiry would recommend that the Public Utilities Commission cause an in-depth analysis to be conducted to compare present practices with those recommended by him.

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Dr. Stutz recommended that two things go to the Public Utilities Commission as an outcome of his appearance before the Inquiry. One is some statement of recognition that, at least in principle, cost of service and rate design can have an effect on the possibility of customers achieving financial savings from attempts at conservation. In other words, conservation can be made more rewarding through appropriate cost of service and rate design. The second thing was some recognition that two specific areas of Maritime Electric's practice have at least been noted as areas where such changes are possible, given the range of current practice. Those are: generation, the allocation of cost thereof, and the use of a minimum system and the related issues of customer costs.

Dr. Stutz emphasized that the Public Utilities Commission should be encouraged to ensure that both sides of the argument are adequately represented by competent professional advice in order to ensure a fair hearing of the issue.

The subject matter of the evidence given by Dr. Stutz is all clearly pertinent to the cost of electric power to the residents of this Province. It appears important that an appropriate system of price structure be employed, not only in the interests of fairly apportioning the cost of electric power among the users thereof, but also to ensure that rates are usage-sensitive in the interests of promoting the responsible and economic use of electric power.

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RECOMMENDATION #26

THAT the Public Utilities Commission evaluate the various informed points of view on price structuring and, as a result of its evaluation, that it give such direction to the operating electrical utilities in Prince Edward Island as it considers to be appropriate. In carrying out its evaluation, the Public Utilities Commission should ensure that both sides of the argument are sufficiently prepared and thereby sufficiently sponsored and funded so that they can be brought forward to the Commission in a responsible fashion and both sides can be shown.

Dr. Stutz also presented a memorandum prepared by Richard A. Rosen, Executive Vice-President of E.S.R.G. Inc. and himself, by which he addressed a range of topics directly affecting generation planning for P.E.I. and the past supply-oriented decisions of Maritime Electric. Specifically, he discussed Maritime Electric's proposed purchase from LePreau and reviewed the decision of Maritime Electric to purchase capacity from Dalhousie. He recommends that Prince Edward Island should obtain a more favourable purchased power rate from the New Brunswick Electric Power Commission rather than the archaic mechanism of split-savings under the existing economy power arrangement. He further recommends that the Province try to get agreement on a fair share of Hydro Quebec power that comes to New Brunswick and that the power should be passed through to Prince

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Edward Island at cost. He suggests that the foregoing be followed by a sophisticated supply planning study which may indicate that Maritime Electric's 1981 and 1982 purchase of the 20 MW in Dalhousie unit could be reduced if all cost-effective conservation options appropriate to P.E.I. were pursued and/or if Coleson Cove is converted to coal and capacity were made available from it. He suggests that the foregoing planning recommendations be carried out before any commitments are made to purchase capacity from LePreau.

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IX. THE MARITIME ENERGY CORPORATION

The Maritime Energy Corporation was the brainchild of the Council of Maritime Premiers and was conceived with the idea of providing a regional approach to the development of electric power in the three Maritime Provinces. It was designed as a federally chartered Crown corporation with a capital structure of $10 million. Fifty-two percent of the shares were to be owned by the Provinces and the remaining 48 percent by the Government of Canada. The objective of the Corporation was to finance and build new energy systems for the area and to coordinate and direct day-to-day operations. Among the advantages of such an organization would have been the economies which naturally flow from a coordinated large-scale operation, together with the cooperative availability and use of the various sources of power such as hydro, tidal, oil, coal, gas and nuclear.

Unfortunately the effort failed, and it failed for several reasons. It was felt that, to be successful, the Corporation - for purposes of raising money to finance its various projects - should have a Triple 'A' credit rating. A rating this high could not be obtained without a guarantee from the Federal Government and the Government was unwilling to give that guarantee. One of the results of the formation of the Corporation would be the purchase by it from the New Brunswick Electric Power Commission of the LePreau nuclear plant. Nova Scotia wasn't too enthusiastic about sharing the nuclear power project because it was looking forward to a large-scale development of generation by coal. The New Brunswick Electric Power Commission favoured the Corporation

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when it was first suggested because LePreau was then in the early stages of construction and financing was needed. When the Corporation was slow getting off the ground, the New Brunswick Electric Power Commission looked for and received its money elsewhere. New Brunswick consequently became less interested and the whole idea was allowed to drop. Prince Edward Island could definitely benefit from the formation of an integrated regional energy system. It is indeed unfortunate that there appears to be an apparent lack of cooperation within the Maritime region for programs which would benefit all three Provinces.

RECOMMENDATION #27

THAT with a view to developing a regional approach to the supply of electric power within the Maritime region, the Government do everything possible to demonstrate to the Council of Maritime Premiers the benefits which should accrue to the area as a whole, and particularly to this Province, from the formation of a body similar to the now defunct Maritime Energy Corporation and that steps be taken immediately to form such an organization.

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X. PUBLIC OWNERSHIP OF OUR ELECTRIC UTILITY SYSTEM

Would there be a financial advantage to our consumers of power if all generation, transmission and distribution facilities were owned by the Government?

Strong arguments were advanced in favour of a "Yes" answer to this question and equally cogent arguments were advanced that it should be answered in the negative. Public ownership prevails in most Canadian Provinces today but it has yet to be proven that public ownership is more or less efficient than private ownership. Each has its pluses and minuses and the Minister of Energy for the Province advised us that the present Government has "an open view" on the matter. While that is probably a safe position to take, it is not too helpful insofar as providing an answer to the question is concerned.

One of the main arguments in favour of public ownership is that the service can be provided more cheaply and that the public interest would prevail since the interests of shareholders does not have to be protected. It must not be forgotten, however, that in a regulated utility like Maritime Electric, the return to shareholders and the rates to be charged to consumers are subject to regulation and approval by the Public Utilities Commission. It is not an open road insofar as the utility is concerned and, if the Public Utilities Commission is efficiently carrying out the mandate entrusted to it, operating costs will be restricted and shareholders will be given only a reasonable return on their investment. With a wide-awake and alert Public Utilities Commission,

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efficiency of operation on the part of the utility is almost guaranteed, whereas a government operation does not easily lend itself to control of costs and the belief that government management is less efficient than private enterprise management has a high degree of validity.

Another possible danger of public ownership is that of political intervention. It might indeed be difficult to keep politics out of the day-to-day operations of the utility and this is one place where politics should play no part. The experience in Nova Scotia, where Nova Scotia Power Corporation has taken over from the private Nova Scotia Light & Power Company, is a case in point. Power rates have become a prominent political issue in that Province and the Nova Scotia Government is now subsidizing the utility rather than insisting on realistic rates based on the cost of producing the power. This subsidy which, of course, is paid by the taxpayers, amounted to $70 million in the last fiscal year and is budgeted at $67 million for the 1982-83 fiscal year. Can we afford to take the chance of perhaps some day finding ourselves in a somewhat similar situation?

And what about the immediate capital investment required to be made by the Government in the event of a takeover? Since the Company is incorporated under the Canada Business Corporations Act, Maritime Electric takes the position that expropriation is not possible. If this is correct, it would be necessary to arrive at a purchase price mutually agreeable to the shareholders and the Government. At the present time there are 900,000 shares issued

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with a book value of $20.00 and a market value in the area of $13.30 to $13.60 per share. In the event of a takeover, however, it is evident that the shareholders would not be prepared to sell at ordinary market price. A fairly common benchmark for recent takeovers has been approximately 30 percent above current market price, but the Chief Executive Officer of the Company advised the Inquiry that a premium of this order would never be acceptable to the shareholders. He places a value of $73 million on shareholders' equity. Even if this suggested price could be bargained downward, the required amount would have to be borrowed by the Government and financed at today's high rate of interest. This would mean increased financing charges and, in my opinion, the additional debt and the heavy interest commitment which necessarily follows it is well above the ability of this Province to handle at the present time and is, therefore, not economically feasible. In addition, I am by no means convinced that lower power rates would necessarily follow such a takeover. In fact, the opposite might very well be the case.

I do, however, see a distinct advantage in not allowing Maritime Electric to acquire additional generating equipment. All the capital assets of the utility must be taken into consideration by the Public Utilities Commission when it calculates the rate base, and it is on the rate base that the amount the utility is allowed to earn is calculated. The steps in calculating the rate base are:

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1. Determine the assets of the utility.
2. Deduct from the value of these assets:
   (a) depreciation;
   (b) the value contributed by others to the purchase of these, for example government subsidies;
   (c) deferred income tax applicable to future years.
3. To the sub-total thus obtained, add an amount equal to the Company's need for working capital.

The result is the "rate base" and it is on the basis of this rate base that the return to the Company is calculated.

It is evident, therefore, that the larger the rate base the larger is the return to the utility, and the larger the return to the utility the larger must be the rates the consumers of power must pay to provide that return. The Public Utilities Commission will no doubt attempt to keep this return within reasonable limits but the utility must be allowed to make a reasonable profit. Assets, therefore, form an integral part of the rate base and it is for this reason that it is definitely to the advantage of the Company to acquire these assets and thereby increase its rate base. They will be owned by the utility but paid for by the consumers of power.

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RECOMMENDATION #28

THAT all generating assets required to be purchased in the future be purchased by the Government of Prince Edward Island and rented to Maritime Electric at an annual rental sufficient to both amortize the cost price and pay the annual interest on the amount borrowed to purchase the assets.

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XI. PUBLIC UTILITIES COMMISSION

Our Public Utilities Commission is a statutory body entrusted with the general supervision and regulation of all matters delegated to it by the Lieutenant Governor in Council or by any other Statute of the Province. It presently exercises authority over the Electric Power and Telephone Act, the Petroleum Products Act, the Motor Carriers Act, the Motor Vehicle Transport Act (Canada), and the Water and Sewage Act. While electric and telephone companies are, without question, public utilities there is some doubt in my mind whether the administration and matters pertaining to either the Motor Carriers Act or the Motor Vehicle Transport Act should be the responsibility of this Commission. As is the case in most other Provinces, the Chairman and the members of the Commission are appointed by the Lieutenant Governor in Council for an unstated period of time rather than for a fixed period. The Act limits the number of commissioners to three and does not require any special qualifications or skills for appointment.

During our Phase I public hearings, some dissatisfaction was expressed with regard to the method of appointment of the members, and it was suggested that it should be by popular election rather than by the Lieutenant Governor in Council. The chief argument advanced by those favouring an elected commission is that it guarantees independence from politics and ensures the public that the membership is selected on the basis of fitness for office rather than on the basis of political affiliation. In the past, however, there has been nothing to indicate that any of the appointees to our Public Utilities Commission have been either subjected to or

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amenable to political pressure and they have always been free to act in an independent manner. I have no reason to believe that this situation will change. Popular elections do not necessarily guarantee competent personnel for the reason that properly qualified people are not always prepared to subject themselves to the process of an election and the campaigning which necessarily precedes it. Selections to a body of this importance should always be from the widest possible field of candidates rather than only from those prepared to subject themselves to the election process. I therefore recommend a continuation of the present system whereby membership is through appointment by the Lieutenant Governor in Council.

I am of the opinion, however, that a change should be made with respect to the length of service of the commissioners. Presently, all appointments are for no stated period of time and any appointee may be removed at the pleasure of the Lieutenant Governor in Council. I do not consider this a satisfactory procedure. The Commission is almost invariably called upon to consider matters of a technical nature and a degree of expertise must be developed if the public interest is to be properly protected. Appointments for a fixed term of years would allow, through experience, the development of this expertise. We do not necessarily require engineers, accountants and lawyers as members. The qualities to look for should not be narrowly technical but rather should centre around open-mindedness, a good understanding of management and finance and, above all, good common sense. A commission consisting entirely of experts should be avoided. The appointments should,

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however, be for a fixed term of years and during good behaviour. I would recommend a term of not less than six years on a two-year staggered basis and with a provision for re-appointment.

The size of the Commission should be relative to the function it is called upon to perform. The present membership of three would appear to be satisfactory so long as its role is limited to strictly regulatory proceedings. Should the workload expand, consideration will have to be given to an enlarged membership.

It would appear, however, that the staff of the Commission is definitely under-manned. It presently consists of an Executive Director, a Motor Carrier Administrator, a Motor Carrier Inspector and three people performing duties of a clerical and stenographic nature. The present Executive Director gave evidence before the Inquiry, and when asked to comment with respect to the adequacy of the present staff he answered in part as follows:

> "In regard to the adequacy of the staff to carry out the duties prescribed under the various Acts administered by the Commission, the present staff while able to cope with the day-to-day administration and operation of the Commission, is not large enough to allow staff members to take time to attend courses in regard to matters involving the Commission and, as well, the staff is not large enough to carry out in-depth research or investigation into various matters involved in the Acts administered by the Commission. Due to the fact that the workload of the

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> Commission has increased significantly in recent years, any attempt by the commissioners to become involved in in-depth research and investigation into the various matters involved in the Acts administered by the Commission would necessitate an increase in staff."

If, as the Executive Director maintains, in-depth research and investigation is being curtailed because of a staff deficiency, the situation should be corrected immediately. I will leave the matter to the discretion of the Commission Chairman but with the observation that the work entrusted to the Commission must not be hampered by reason of a lack of sufficient competent back-up staff.

The Phase I hearings very clearly indicated that some people feel that, for some reason or another, the Public Utilities Commission has served them poorly insofar as regulating and controlling Maritime Electric is concerned. The general consensus of those who expressed themselves seemed to be that the Company gets what it asks for and the customers get higher bills. I am inclined to agree that in certain cases it has been demonstrated that there has been, on the part of the Commission, an absence of the required critical evaluation of certain of the submissions made by the utility. This default on the part of the Commission may have resulted in increased rates to the consumers of power in this Province. There are two reasons for subjecting a privately-owned utility such as Maritime Electric to the supervision of a Public Utilities Commission. The first is that the utility is providing an essential service to the public, and the second is that it enjoys

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a monopoly in the providing of that service. The Commission is therefore established to protect the public from possible abuses on the part of the monopoly. It provides a function in other cases entrusted to competition in the marketplace. For these reasons the Commission is charged with the responsibility of regulating the operations of the utility in the public interest. It is with respect to this responsibility that I am critical of the Public Utilities Commission relevant to the manner in which it handled the application of Maritime Electric to purchase from the New Brunswick Electric Power Commission the 10 percent interest in the Dalhousie #2 generating unit.

Under the provisions of Section 6 of the Electric Power and Telephone Act a utility must, before making any extensions or improvements to its system costing in excess of $5,000, obtain the approval of the Commission. The Dalhousie purchase involved the expenditure of almost $20 million and resulted in an addition to the physical assets of the Company. This addition to its physical assets meant an increase in its earnings base.

Section 26 of the same Act provides that:

> "Every public utility shall be entitled to earn annually such return as the Commission considers just and reasonable, computed by using the earnings base as fixed and determined by the Commission for each type of service furnished, rendered or supplied by such public utility and the return shall be in addition to such expenses as the Commission may allow as

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> reasonable and prudent and properly chargeable to operating account and to all just allowances made by the Commission according to this Act and the rules and regulations made by the Commissioner hereunder."

By virtue of this Section, therefore, the annual return that is allowed to Maritime Electric is calculated on the earnings base of the Company. Since the earnings base was being increased by reason of the Dalhousie purchase, an increase in its allowable annual return would almost certainly be requested by the Company and, if granted, could result in an increase in rates to the consumers of power. This, in fact, was what actually happened. At the 1981 rate hearing, the Company requested an increase and was granted a 21 percent increase in rates and at least one-quarter of this allowed increase can be properly attributed to the Dalhousie purchase.

The evidence now before me establishes that this $20 million purchase was authorized by the Commission without a public hearing and despite the fact that the Commission must surely have realized that it would very soon be followed by an application by the utility for an increase in rates. In effect, therefore, the consumers of power - the very people who are now being asked to pay for this $20 million addition to Maritime Electric's assets - had no opportunity to express themselves before the Commission on the advisability or otherwise of this purchase. An expenditure of this size should never have been authorized without a public hearing and I must condemn in the strongest possible terms the failure of the Commission to hold such a hearing.

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The former Chairman of the Commission attempted to justify what was done by saying that the Government of the day had approved the purchase and that the Commission had no choice but to fall in line. This, in effect, is saying that the Commission is simply a tool of Government, whereas the Public Utilities Commission Act very clearly states that:

> "The Commission has general supervision of all public utilities and shall make all necessary examinations and inquiries and keep itself informed as to the compliance by public utilities with this Act and may obtain from any public utility all information necessary to enable the Commission to fulfil its duties." (Section 9)

The Commission is clearly entrusted with the regulation of public utilities. Subject to legislation which may be passed limiting the powers of the Commission, it is the master of its own affairs and I certainly hope that it never feels that it is in any way subject to the whims or dictates of Government. In any event, the Government never indicated to the Public Utilities Commission that it had either ordered or approved the purchase. It merely advised that it did not consider that the proposed purchase would have any detrimental effect on the environment. A decision as to whether the purchase should or should not be made still rested with the Commission and, in my opinion, the decision should only have been made after a public hearing and after the following supporting data had been supplied:

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1. A report from an independent engineer describing the unit being acquired and certifying to its condition.

2. A report outlining the operating experience of the unit to the date of purchase.

3. A statement attesting to the insurance coverage and naming Maritime Electric as a participant in the policy.

4. A report regarding the availability and the cost of fuel for the unit and an estimate of the future cost of supply.

The evidence established that none of this information was before the Commission in documentary form and it appears that it simply took it for granted that everything was in order because Maritime Electric said it was.

For purposes of this phase of the Inquiry, the basic question is: How effectively has the Public Utilities Commission performed its regulatory function in holding power rates to a reasonable level? The immediate past-Chairman of the Commission, Mr. Brennan, and its present Executive Director, Mr. Clair Sudsbury, are each satisfied that this objective has always been met. I am not so convinced and for the following reasons:

1. The Dalhousie purchase necessitated an increase in rates and this purchase was authorized without

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a public hearing and without the filing of certain essential information supporting the need for the purchase at that particular time.

2. The exclusive contract with Montreal Engineering for the supplying of engineering and professional services was allowed to continue from year to year without determining for sure whether or not these same services could be provided to Maritime Electric at a lower price.

3. Since it did not insist that public tenders be called for major line construction and repairs, there was no way for the Commission to be assured that this work was being done at the best possible price and at the same time consistent with quality performance.

4. Supplementary appropriations, in some cases totalling more than $400,000 per year, are allowed to be made by the utility without prior Commission approval.

5. On at least one occasion the cost of commodity charge was fixed by the Commission before it received from the utility the information on which its decision should have been based.

6. In determining the rate base, the utility has been permitted to depreciate an asset for the full twelve months, even if it had been acquired only in the twelfth month of that year.

7. An even more glaring error is pointed out by CBCL Limited in its "Maritime Electric Company Limited Earnings Base Review 1978-1980" already cited:

> "In 1980 a new 4.16 KV : 480V, 750 KVA transformer was purchased for the river pumphouse under Purchase Order No. 209. The transformer arrived in November and could not be installed without taking the Charlottetown Steam Plant out of service. The transformer was stored on site until connection in July, 1981 but was capitalized in 1980. It is our opinion that this Work Order should have been carried over to 1981 and capitalized when the transformer was placed in operation." (Emphasis mine)

Insofar as Maritime Electric is concerned, one of its fastest escalating operating costs has been the cost of fuel and the utility is now permitted to compensate itself for fuel escalation by what is commonly called a Fuel Adjustment Clause. This Clause permits the utility to adjust its rates monthly to compensate for this rising cost. As long as this increase is subject to the approval of the Commission, in fairness to Maritime Electric it should continue.

Another adjustment to rates is concerned with what is known as a Cost of Commodity Clause. This Clause permits adjustments to rates up or down if the utility achieves a greater or lesser return

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on rate base than that allowed. It is contended by some that this Cost of Commodity Clause provides an absolute and unconditional guarantee that a certain level of earnings will be attained and that much of the risk has therefore been removed from shareholders insofar as the rate of return on shares is concerned. To a certain extent this is correct, but it does not cause me too much concern at the present time. Maritime Electric shareholders are not presently receiving an exorbitant return on their investment and I am confident that the Commission will carefully monitor this and will, among other things, relate the rate of return to the risks taken by the shareholders. For this reason I am not prepared at this time to recommend any change in the Cost of Commodity Clause.

It has been suggested that the present Public Utilities Act is now outdated and cumbersome and could do with some tidying up and streamlining. The body best qualified to decide on that issue is the Commission itself. It is the body that must work under the Act and any recommendations submitted by the Commission with respect to amendments should be carefully considered by the Government. The Commission would be well advised to consult with Maritime Electric and the Town of Summerside with respect to proposed changes.

RECOMMENDATION #29

THAT Section 17 of the Electric Power and Telephone Act be amended to make it mandatory that public hearings be held with respect to all applications by Maritime Electric relative to:

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(a) rate increases;

(b) construction projects requiring the expenditure of any amount in excess of $25,000 (Twenty Five Thousand Dollars);

(c) the purchase of additional generating capacity or entering into new contracts for purchased power;

(d) all securities issues.

RECOMMENDATION #30

THAT the annual capital and operating budgets of Maritime Electric be submitted to the Public Utilities Commission for its approval at least two (2) months prior to the commencement of the Company's fiscal year and that, except in emergencies, additional appropriations be required to be approved by the Commission before the expenditures are made.

RECOMMENDATION #31

THAT the Commission closely examine the relationship between Maritime Electric and Montreal Engineering, with particular reference to the implementation of the recommendations contained in this Report.

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XII. THE TOWN OF SUMMERSIDE

The Town of Summerside finds itself in a unique position insofar as the generation of electric power is concerned. It had the foresight and good sense to retain its own generating equipment when all other utilities were selling out to Maritime Electric, and it is now able to sell power to its own citizens at comparable or lower rates than is paid by the customers of Maritime Electric and it is able to do this at a profit. It now provides services to 2,700 customers within its own incorporated boundaries, together with approximately 1,100 customers in the villages of Wilmot, St. Eleanors, and the community of Sherbrooke. Twenty-five people are provided with employment with a 1981 payroll of $577,947.

At the present time the Town and Maritime Electric have an Agreement, the preamble to which recognizes that the Town, like all electrical consumers in the Province:

> "...is entitled to share equitably in the benefits of the N.B.-P.E.I. interconnection and hereby receives those and the other benefits of interconnection with the Maritime Electric system."

The Agreement then goes on to provide that:

> "The Town shall buy from Maritime Electric and Maritime Electric shall provide the Town's power and energy during the terms of the Agreement, at the rate set out in 8.1(a)."

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and further, that:

> "3.1 Maritime Electric may buy and the Town shall provide energy up to the capacity required in 2.1.
>
> 3.2 Maritime Electric shall pay for such energy the rate set in 8.1(b). "

A dispute between the two parties arose in the fall of 1981 with respect to the price to be paid by Maritime Electric to the Town for the existing diesel generating capacity. The matter was heard by the Public Utilities Commission and it ruled in favour of Maritime Electric. The Town appealed this decision to the Supreme Court of the Province but the case has not yet been heard.

On January 21, 1982, in accordance with a clause in the Agreement, Maritime Electric notified the Town that:

> "...two years from the date of the receipt of this letter, that Agreement is cancelled."

Negotiations between the two parties continued with a view to obtaining from Maritime Electric an interconnection agreement similar to the agreement presently existing between the Company and the New Brunswick Electric Power Commission. A Memorandum of Understanding to this effect was prepared and signed on behalf of the Town but Maritime Electric refused to sign, indicating that the approval of the Public Utilities Commission would be required. Negotiations are therefore at a standstill and the Town now wishes

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to break away entirely from Maritime Electric and establish its own generating capability.

In order to supply their requirements and give them a 15 percent reserve, the Town requires a capacity of approximately 12 MW. They are now able to produce 6.2 MW from their own facilities and the plan is to purchase a 4 MW diesel-fired generator at a cost of approximately $1 million per MW, and purchase a 2 MW entitlement from the nuclear fired LePreau plant in New Brunswick.

Negotiations for the LePreau purchase were commenced and on March 19, 1982 Mr. L.G. Titus of the New Brunswick Electric Power Commission wrote to the Chairman of the Town's Electric Committee advising him that the Commission still had 100 MW of capacity for sale and that it would prefer to sell to Canadian utilities rather than export the power to the United States. Mr. Titus points out, however, that:

> "It would be necessary to have an indication that the P.E.I. Government supports Summerside's interest in obtaining capacity from Point LePreau."

And therein lies the roadblock. The attitude of the Prince Edward Island Government with respect to the purchase of nuclear power, whether by equity or by entitlement, was quite succinctly brought to the attention of the Inquiry by the present Minister of Energy, the Honourable Barry Clark, when he said:

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> "The Government's policy on nuclear-generated power has not changed. Government's position remains that the risks of nuclear generated power from an environmental as well as economic standpoint remain as significant today as they were in 1979.
>
> Government remains unpersuaded that an arrangement such as the Point LePreau Entitlement Agreement can safely be entered into by this Province. The potential costs to this Province of a lengthy shutdown or a full-scale nuclear disaster would serve to vastly increase the already burdensome cost to consumers for the supply of electricity. As recently as May 14 of this year, the Journal Pioneer reported that Lloyd's of London, one of the foremost risk-takers in the insurance industry, with a reputation for insuring almost anything, had refused to insure the financial risk on any more nuclear plants. This kind of reaction by the private sector does little to bolster Government's confidence in the safety of nuclear power as a financial risk."

The Town's Electric Committee, through its Chairman, now asks that I recommend to Government that it approve the commencement of negotiations by the Town with the New Brunswick Electric Power Commission for the purchase of an entitlement interest in LePreau.

While all the potential monetary dangers relative to either an equity or an entitlement interest in a nuclear generating plant are as applicable to the Town of Summerside as they are to Maritime Electric, I see no reason why either should be denied the advantages

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of nuclear power if they are themselves prepared to assume the potential dangers which will necessarily follow such an arrangement. We must be absolutely sure, however, that the almost certain financial losses which will follow if anything goes wrong will not be the responsibility of Government, and that Government will not be asked or expected to bear any portion of these risks and will not be required to compensate for them.

RECOMMENDATION #32

If the Town of Summerside is prepared to first enter into a carefully worded and iron-clad agreement with the Government that it will assume all the risks associated with a LePreau entitlement and is releasing the Government from all manner of liability and obligation whatsoever, I would recommend that the Government of Prince Edward Island give its approval to the commencement of negotiations. This agreement should be accompanied by the statement from its auditor that the financial position of the Town is such that it can meet these requirements.

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XIII. THE RELATIONSHIP BETWEEN THE GOVERNMENT AND MARITIME ELECTRIC COMPANY, LIMITED

During the period 1975-1982, electric power rates in this Province have almost tripled; from 3.84¢/KWh in 1975 to 11.11¢/KWh in 1982. The recommendations I have made for rate relief are, for the most part, long-term ones and are of very little immediate help to the unfortunate situation in which we now find ourselves. I have recommended some changes which, if adopted, should provide a measure of relief immediately but will be far from sufficient to bring our rates into line with what is being paid by the consumers of power in the other Provinces. Anything in the nature of substantial immediate relief must come by way of subsidization and the greater part of this subsidy must come from the Government of Canada. Any approach to the Government of Canada on this matter will almost certainly be met with the argument that it (the Government of Canada) is already providing a measure of assistance which is unfortunately not being used directly for the benefit of the customers of Maritime Electric. I refer to the provisions of the Public Utilities Income Tax Transfer Act, a 1966 enactment of the Federal Government under which 95 percent of all income taxes paid by investor-owned utilities are returned to the Provinces in which the taxes originate.

The first legislation with respect to this concession dates back to 1947 and formed an integral part of the Dominion-Provincial Tax Rental Agreement of that year under which 50 percent of income taxes would be rebated. The purpose of the rebate was to place

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investor-owned utilities, such as Maritime Electric, and their customers on an equal footing with publicly-owned utilities. The publicly-owned utilities paid no income tax and the Government of Canada recognized that the consumers of power in Provinces that depended on investor-owned utilities for their power were being asked to pay higher rates because of this additional operating expense which had to be charged back to the consumers. The legislation was therefore obviously designed to give relief to the consumers of power and not to enrich provincial treasuries.

This 50 percent rebate continued from 1947 to 1966 and in that year the existing legislation was enacted and the rebate increased from 50 percent to 95 percent. In concluding his remarks to the House of Commons at the time he introduced the 1966 legislation, the then Minister of Finance, the Honourable Mitchell Sharpe, expressed the wish that the Provinces would use the tax transfer "for the benefit of the industry and its customers" (emphasis mine). In some Provinces (for example Alberta) the rebate was passed on directly to the consumers of power and showed as a discount on the consumers' bill. In the case of Prince Edward Island, however, the rebate simply found its way into the general revenues of the Province. This, in my opinion, is not what was intended when the legislation was enacted and it is obvious that, at least since 1966, our consumers of power have not been receiving the full benefit of this tax rebate.

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The present Minister of Tourism, Industry and Energy attempted to justify the transfer to the Provincial Treasury by saying that by placing the money in general revenue it is cost-shared with the Federal Government and is therefore of greater advantage to the taxpayers. I am not prepared to accept this as a completely valid reason for the practice followed. It may, indeed, benefit *all* taxpayers. The fact remains, however, that it was designed *only for the benefit of the consumers of electric power*.

The record indicates that since the new legislation was enacted in 1966, the following amounts have been rebated:

1967	-	$ 396,000
1968	-	367,000
1969	-	442,000
1970	-	550,000
1971	-	446,000
1972	-	468,000
1973	-	442,000
1974	-	397,000
1975	-	428,000
1976	-	861,000
1977	-	736,000
1978	-	1,090,000
1979	-	1,943,000
1980	-	1,052,000
1981	-	1,289,000
		$10,907,000

Mr. Cameron, the Chief Executive Officer of Maritime Electric, told the Inquiry that a $1 million annual rebate to the utility could result in a 3 percent reduction in rates to the consumers and I can see no reason why this benefit should not be enjoyed by them.

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The money was intended for that purpose and it must be so directed.

RECOMMENDATION #33

THAT all payments received by the Province from the Government of Canada after January 1, 1983 under the provisions of the Public Utilities Income Tax Transfer Act be turned over to Maritime Electric Company, Limited upon receipt of same. These payments must not be interpreted as being a subsidy to the utility by the Province.

RECOMMENDATION #34

To ensure that the full benefit of this refund goes to the benefit of the consumers of power in the Province, Maritime Electric, upon receipt of the refund, will immediately apply to the Public Utilities Commission for a reduction in the rates for power by reason of this additional revenue.

This additional revenue to the utility should, according to Mr. Cameron's evidence, result in a 3 percent reduction in rates for every one million dollars received. But even this reduction will not bring us even close to the rates enjoyed by the other Atlantic Provinces. Parity with these Provinces is probably the

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most we can expect, but we are unquestionably entitled to at least that.

At the time of the installation of the cable, the Government of Canada loaned the Province $9 million to assist in financing the Province's share of the cost. Although the cable is presently leased to Maritime Electric at an annual rental, this rental of $2,176,210 is part of the utility's operating expenses and must be recovered from the consumers. It is computed to be from 4 to 4 1/2 cents per KWh. The Federal Government should be asked to write off this $9 million loan and the Province would then be in a position to give Maritime Electric the use of the cable rent-free. This could mean a further reduction of 5 percent on our power bills, for an estimated total reduction of 8 percent from these two sources.

RECOMMENDATION #35

THAT the Government of Canada be requested to release the Government of Prince Edward Island from its obligation to repay any balance presently due on the $9 million loaned to assist in the financing of the cable interconnection and, if this request meets with the approval of the Government of Canada, the Provincial Government discontinue the requirement that Maritime Electric pay an annual rental for the use of the interconnection.

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XIV. CONCLUSIONS

Implementation of the other recommendations contained in this Report will hopefully result in improvements in the areas of internal management of the utility, regulation by the Public Utilities Commission, and a more definitive government policy with respect to the whole question of power, but until a safe, secure and cheaper source becomes available to us, substantial short-term relief from high rates is just not possible without heavy subsidization.

Our industries and our whole fibre of life are being adversely affected by the competitive disadvantage we are subjected to because of high power rates. Almost all of the basic elements contributing to this situation are, for the most part, beyond our control and our provincial economy is such that the Provincial Government is financially powerless to provide the required assistance. For this reason, we have no choice but to turn to the Federal Government for interim relief.

Our need is both an urgent and a legitimate one and federal relief in situations of this nature is not without precedent. Financial assistance was provided by the Federal Government with respect to the Mactaquac project on the St. John River. Newfoundland was assisted in its Baie d'Espoir hydro project and the LePreau operation is heavily subsidized. While we recognize and certainly appreciate the assistance provided also to us at the time of the cable interconnection, circumstances over which we have no control now compel us to ask for more. My recommendation, therefore, is:

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RECOMMENDATION #36

THAT the Government of Prince Edward Island continue to press the Government of Canada for interim financial assistance in an amount sufficient to allow power to be reduced to an amount equivalent to the average rates of the Provinces of Nova Scotia and New Brunsick.

This Inquiry has been conducted at considerable expense both to the Government of Prince Edward Island and to Maritime Electric. The costs incurred by the Company will eventually be passed on to the consumers of power and, if recovered in one lump sum, could be reflected in our rates for the current year. In order to avoid the possibility of that happening, I would suggest to the Public Utilities Commission that it order that the cost be capitalized and recovered over a period of time. My understanding is that such an order would not constitute a precedent, at least insofar as other Commissions are concerned, and I would recommend it as the procedure to be followed in this particular case.

RECOMMENDATION #37

THAT the Public Utilities Commission require Maritime Electric to capitalize its costs relevant to this Inquiry and that these costs be recovered from general revenue over a period of not less than three (3) years.

- End -

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SUMMARY OF RECOMMENDATIONS

#1 THAT when future issues of the voting shares of either Maritime Electric Company, Limited or Maritime Electric (P.E.I.) Limited are authorized by the Public Utilities Commission, it be a condition of such authorizations that the sale of these shares be confined for a period of at least fifteen (15) days to residents of the Province of Prince Edward Island/or local institutional investors. (Page 21)

#2 THAT during this fifteen day period the Company be required to undertake a comprehensive and well advertised promotional campaign with a view to acquainting all interested investors with the details of the issue. (Page 21)

#3 THAT the Government of Prince Edward Island purchase a substantial block of the Company's voting shares and that at its next annual meeting of shareholders the Company nominate a representative of Government to its Board of Directors. (Page 21)

#4 THAT no person directly involved with the determination of policy or the responsibility of management, with the exception of the Company President, be elected to sit on the Board of Directors of the Company. (Page 24)

#5 THAT as long as Montreal Engineering continues to supply services for a fee to either Maritime Electric Company, Limited or Maritime Electric (P.E.I.) Limited, neither the Chairman of the Board of Directors nor the Chief Executive Officer of either of these companies should be an employee, an officer, a director, or a shareholder of either Montreal Engineering or Monenco Limited. (Page 31)

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#6 THAT the Public Utilities Commission examine this one-on-one-on-one relationship and, if found to be contributing substantially to the cost of management, a change be authorized. (Page 32)

#7 THAT for the purchase of equipment involving a cost in excess of Ten Thousand Dollars ($10,000) the practice of selective bidding be discontinued (except in emergencies) and be replaced by the public tender system. (Page 35)

#8 THAT Maritime Electric immediately commission a study by an independent consultant with a view to determining the feasibility of transferring to in-house staff, by a combination of functions, as many of the consulting services now provided by Montreal Engineering as can be economically so transferred, and that the results of this study be submitted to the Public Utilities Commission as soon as received.(Page 42)

#9 THAT Maritime Electric immediately discontinue its present practice of dealing exclusively with F.A. Tucker Limited for the installation and repair of major transmission and distribution lines and that, except in cases of extreme emergency, public tenders be called for all work of this nature. (Page 43)

#10 THAT Maritime Electric immediately give to Montreal Engineering the required two year notice that it does not intend to renew the presently existing contract with that Company. (Page 43)

#11 THAT for all future issues of Maritime Electric Co. Ltd. securities requiring the services of an underwriter, the Public Utilities Commission require that there be competitive bidding before the services are engaged.(Page 45)

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#12 THAT as long as Montreal Engineering continues to provide to Maritime Electric any of the consulting services it is now providing, no officer, director, or employee of Montreal Engineering should serve on the Board of Directors or occupy the position of an officer of Maritime Electric. (Page 60)

#13 THAT the Public Utilities Commission do what it considers appropriate to ensure that the Company's long-term financial planning procedures are adequate and that they are periodically updated and revised. (Page 66)

#14 THAT future load forecasting remain the responsibility of Maritime Electric and be subject to such review as the Public Utilities Commission may see fit to provide. (Page 80)

#15 In my opinion, it is not practical at the present time to consider the purchase of our entire supply of power from off-Island sources. On-Island facilities are required under the terms of the present Interconnection Agreement and are also required for security of supply purposes. Studies relative to sources of supply sufficient to meet forecasted energy requirements should certainly continue. With an upgrading of the cable interconnection and the related transmission facilities, it may be possible to make an arrangement whereby all our requirements could be obtained from the mainland. In addition, it is not possible at the moment to estimate with any degree of accuracy what effect any such arrangement would have on Island power rates. (Page 86)

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#16 THAT Maritime Electric negotiate with New Brunswick Electric Power Commission for a lower price for the power now being purchased and that the Prince Edward Island Government assist Maritime Electric in these negotiations. (Page 87)

#17 THAT when monthly bills are estimated in excess of Twenty Dollars ($20) of actual consumption and the estimated amount is paid within the time required before the delayed payment penalty comes into effect, the Company be required to pay interest at prevailing bank loan rates on the overpayment. (Page 113)

#18 THAT those customers who choose to read their own meters be rebated the sum of One Dollar ($1.00) for each month the meter is so read and that the practice of estimating readings be not applicable to them if the meter card is received by the Company on or before the 10th of that month. (Page 113)

#19 THAT for the convenience of its customers, the Company make the necessary arrangements whereby those residing outside the Summerside, Charlottetown, and Montague areas may pay their accounts at central locations and without any additional cost. (Page 114)

#20 THAT for the convenience of consumers in receipt of Old Age Security, the Company give consideration to establishing a plan whereby their accounts can be paid on the last day of each month without the imposition of a delayed payment penalty. (Page 114)

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#21 THAT an independent study be conducted to determine the availability of a sufficient supply of wood at a price which would make it economically feasible to establish at least one 10 MW wood-fired generating plant in an area of the Province most accessible to the quantities of wood necessary to operate such a plant. (Page 117)

#22 THAT the Government of Prince Edward Island continue to negotiate with Hydro Quebec with a view to entering a long-term agreement for the supply of sufficient firm power to meet our future requirements. (Page 119)

#23 THAT our Provincial Government and Maritime Electric give every encouragement to and closely monitor the experiments presently underway and, if found to be commercially feasible, the Government enter upon a long-range program designed to supplement by wind generation existing sources of electric power. (Page 120)

#24 THAT when the natural gas pipeline reaches New Brunswick, the Government of Prince Edward Island approach the Federal Government with a proposal that, if feasible, it give substantial financial assistance to the construction on the New Brunswick side of a natural gas generating unit of sufficient capacity to supply the energy requirements of the Province and that an arrangement be arrived at with Maritime Electric whereby the power thus generated may be wheeled over the transmission lines to the consumers. (Page 123)

#25 THAT the Government of Prince Edward Island continue to monitor the Point LePreau operation from the point of view of its performance and its safety with a view to the purchase by it - probably in the late 1980's - of a 5 percent entitlement in the power generated from its nuclear plant. (Page 130)

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#26 THAT the Public Utilities Commission evaluate the various informed points of view on price structuring and, as a result of its evaluation, that it give such direction to the operating electrical utilities in Prince Edward Island as it considers to be appropriate. In carrying out its evaluation, the Public Utilities Commission should ensure that both sides of the argument are sufficiently prepared and thereby sufficiently sponsored and funded so that they can be brought forward to the Commission in a responsible fashion and both sides can be shown. (Page 135)

#27 THAT with a view to developing a regional approach to the supply of electric power within the Maritime region, the Government do everything possible to demonstrate to the Council of Maritime Premiers the benefits which should accrue to the area as a whole, and particularly to this Province, from the formation of a body similar to the now defunct Maritime Energy Corporation and that steps be taken immediately to form such an organization. (Page 138)

#28 THAT all generating assets required to be purchased in the future be purchased by the Government of Prince Edward Island and rented to Maritime Electric at an annual rental sufficient to both amortize the cost price and pay the annual interest on the amount borrowed to purchase the assets. (Page 143)

#29 THAT Section 17 of the Electric Power and Telephone Act be amended to make it mandatory that public hearings be held with respect to all applications by Maritime Electric relative to:

(a) rate increases;

(b) construction projects requiring the expenditure of any amount in excess of $25.000;

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#29 (cont'd.)

(c) the purchase of additional generating capacity or entering into new contracts for purchased power;

(d) all securities issues. (Page 155)

#30 THAT the annual capital and operating budgets of Maritime Electric be submitted to the Public Utilities Commission for its approval at least two (2) months prior to the commencement of the Company's fiscal year and that, except in emergencies, additional appropriations be required to be approved by the Commission before the expenditures are made. (Page 155)

#31 THAT the Commission closely examine the relationship between Maritime Electric and Montreal Engineering, with particular reference to the implementation of the recommendations contained in this Report. (Page 155)

#32 If the Town of Summerside is prepared to first enter into a carefully worded and iron-clad agreement with the Government that it will assume all the risks associated with a LePreau entitlement and is releasing the Government from all manner of liability and obligation whatsoever, I would recommend that the Government of Prince Edward Island give its approval to the commencement of negotiations. This agreement should be accompanied by the statement from its auditor that the financial position of the Town is such that it can meet these requirements. (Page 160)

#33 THAT all payments received by the Province from the Government of Canada after January 1, 1983 under the provisions of the Public Utilities Income Tax Transfer Act be turned over to Maritime Electric Company, Limited upon receipt of same. These payments must not be interpreted as being a subsidy to the utility by the Province. (Page 164)

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SUMMARY OF RECOMMENDATIONS (Cont'd.)

#34 To ensure that the full benefit of this refund goes to the benefit of the consumers of power in the Province, Maritime Electric, upon receipt of the refund, will immediately apply to the Public Utilities Commission for a reduction in the rates for power by reason of this additional revenue. (Page 164)

#35 THAT the Government of Canada be requested to release the Government of Prince Edward Island from its obligation to repay any balance presently due on the $9 million loaned to assist in the financing of the cable interconnection and, if this request meets with the approval of the Government of Canada, the Provincial Government discontinue the requirement that Maritime Electric pay an annual rental for the use of the interconnection. (Page 165)

#36 THAT the Government of Prince Edward Island continue to press the Government of Canada for interim financial assistance in an amount sufficient to allow power to be reduced to an amount equivalent to the average rates of the Provinces of Nova Scotia and New Brunswick. (Page 167)

#37 THAT the Public Utilities Commission require Maritime Electric to capitalize its costs relevant to this Inquiry and that these costs be recovered from general revenue over a period of not less than three (3) years. (Page 167)

APPENDIX 1

CHAPTER P-30

PUBLIC INQUIRIES ACT

Matters for which inquiry may be called

1. The Lieutenant Governor in Council may cause inquiry to be made into and concerning any matter connected with the good government of this province, or the conduct of any part of the public business thereof and among other things the cost and retail sale price within the province of any goods or commodity as well as the cost of carriage to and within the province of such goods or commodity and the spread between the cost of production and retail price to the consumer in this province. R.S.P.E.I. 1951,c.130,s.1.

Commissioner, appointment

2. If the inquiry is not regulated by any special law, the Lieutenant Governor in Council may appoint a person or persons as a commissioner by whom the inquiry shall be conducted. R.S.P.E.I. 1951,c.130,s.2.

Powers of commissioners

3. The commissioner may summon before him any witnesses, and may for that purpose under his hand issue a subpoena requiring and commanding the person therein named to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to the subject matter of the investigation, and to bring with him and produce any document, book or paper, which he has in his possession or under his control relative to any such matter as aforesaid; and any such person may be summoned from any part of this province by virtue of the subpoena. R.S.P.E.I. 1951,c.130,s.3.

Enforcing attendance and compelling witnesses

4. The commissioner has the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases. R.S.P.E.I. 1951,c.130,s.4.

Staff for inquiry

5. The commissioner, if thereunto authorized by the commission issued in the case, may engage the services of accountants, engineers, technical advisers, or other experts, clerks, reporters and assistants, and also the services of counsel to aid and assist the commissioner in the inquiry. R.S.P.E.I. 1951,c.130,s.5.

Counsel, right to

6. The commissioner may allow any person, whose conduct is being investigated under this Act, and shall allow any person against

whom any charge is made in the course of the investigation, to be represented by counsel. R.S.P.E.I. 1951,c.130,s.6.

Notice of charge

7. No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct against him and he has been allowed full opportunity to be heard in person or by counsel. R.S.P.E.I. 1951,c.130,s.7.

Inquiries conducted from outside province, authority

8. (1) The Lieutenant Governor in Council may vest in any board, commission, tribunal or other body or person established by, under or in relation to the Council of Maritime Premiers for the purpose of studying, investigating, hearing or determining any matter of common concern among the Provinces of Prince Edward Island, Nova Scotia and New Brunswick, all of the powers and privileges that commissioners have under this Act.

Idem

(2) The powers and privileges vested pursuant to subsection (1) may be exercised by the board, commission, tribunal or other body or person in relation to persons, organizations and documents resident or situated within Prince Edward Island wherever the study, investigation or hearing is conducted or held within the region comprised of the Provinces of Prince Edward Island, Nova Scotia and New Brunswick. 1973,c.30,s.1.

-c-
QUEEN'S PRINTER FOR PRINCE EDWARD ISLAND
CHARLOTTETOWN, 1974

CHAPTER 23

An Act to Amend the Public Inquiries Act

(Assented to May 7th, 1982)

BE IT ENACTED by the Lieutenant Governor and Legislative Assembly of the Province of Prince Edward Island as follows:

1. Section 2 of the *Public Inquiries Act* R.S.P.E.I. 1974, Cap. P-30 is amended by the deletion of the words "If the inquiry is not regulated by any special law, the" and the substitution therefor of the word "The".

2. This Act shall be deemed to have come into force on 9th December, 1981.

APPENDIX 2

No. EC1173/81

THE PUBLIC INQUIRIES ACT
COMMISSION OF INQUIRY
INTO
THE COST OF ELECTRIC POWER TO THE RESIDENTS OF PRINCE EDWARD ISLAND

(Approved by His Honour the Lieutenant Governor in Council dated 10 December 1981.)

Council, having under consideration the matter of electricity costs to the residents of Prince Edward Island, ordered that, under authority of the Public Inquiries Act (R.S.P.E.I. 1974, Cap. P-30) a Commission do issue appointing Melvin J. McQuaid to make full inquiry and to make findings and recommendations consistent with the public interest of the Province of Prince Edward Island into and concerning all matters relating to the cost of electric power to the residents of Prince Edward Island, and, without restricting the generality of the above terms of reference, to inquire into and report and make recommendations to the Lieutenant Governor in Council on the following matters:

1. The extent to which generation facilities of Maritime Electric Company, Limited are unnecessary because of the acquisition of electric power from outside Prince Edward Island together with the cost of maintenance of such generation facilities as may have been so rendered unnecessary.

2. The potential effect on service to consumers of electric power in Prince Edward Island if the total of all electric power supplied by Maritime Electric Company, Limited to consumers in Prince Edward Island were purchased from sources outside Prince Edward Island.

3. The adequacy of short term and long term planning and management by Maritime Electric Company, Limited in the areas of,

(a) construction and engineering projects,

(b) electric power generation,

(c) electric power transmission and distribution,

(d) electric power load forecasting, and

(e) the purchase, transportation and inventory of fuels used in its operation.

4. The extent to which Maritime Electric Company, Limited is demonstrating efficiency of operation in the following areas:

(a) The use of electric power generated by Maritime Electric Company, Limited in Prince Edward Island in conjunction with electric power which it acquires from sources outside Prince Edward Island.

(b) The operation and maintenance of generation, transmission and distribution facilities including shared facilities.

(c) The reduction of system losses.

5. The adequacy of financial management practices of Maritime Electric Company, Limited in relation to the following areas.

(a) budgeting,

(b) accounts receivable,

(c) cash management,

(d) borrowing,

(e) internal auditing,

(f) accounting systems, and,

(g) purchasing of major assets.

6. The practices of Maritime Electric Company, Limited in relation to the following areas:

(a) negotiation of employees' salaries and benefits,

(b) determination of required qualifications of employees,

(c) assessment of efficient use of personnel, and,

(d) assessment of training and safety requirements.

7. The practices of Maritime Eelctric Company, Limited in relation to the acquisition of the following goods and services:

(a) all equipment, whether directly related to or incidental to the generation, transmission and distribution of electricity,

(b) insurance,

(c) legal services,

(d) equipment and facilities maintenance services, and,

(e) consulting services.

8. The nature of the executive management structure of Maritime Electric Company, Limited and the methods employed by Maritime Electric Company, Limited in dealing with the following matters:

(a) selection of officers and directors, and,

(b) conflicts of interest of officers and directors in relation to dealings with other companies or individuals.

9. Any other related matters which the Commission considers should be brought to the attention of the Lieutenant Governor in Council

Council further ordered that the Commission may accept for consideration submissions from such persons or organizations as the Commission, in its discretion, may allow

Council further ordered that the Commission may engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants including the services of counsel to aid and assist the Commission in relation to the inquiry as may be deemed necessary.

And finally, Council directed that the costs for the inquiry be assigned to and paid from appropriations to the Executive Council.

Certified a True Copy.
DOUGLAS B BOYLAN
Clerk of the Executive Council

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APPENDIX 3

THE ELECTRIC POWER INQUIRY
RULES OF PRACTICE AND PROCEDURE

PREAMBLE

Following is a general statement of the Rules of Practice and Procedure to be followed by the Commission in conduct of The Electric Power Inquiry.

RULES APPLICABLE TO ALL HEARINGS

1. The Electric Power Inquiry will be an inquiry into all matters relating to the cost of electric power to residents of the Province of Prince Edward Island. The Inquiry will be divided into separate phases as follows:

PHASE I - PUBLIC HEARINGS -- Into all matters relating to the cost of electric power to the residents of the Province.

PHASE IIA - INQUIRY INTO THE AFFAIRS OF MARITIME ELECTRIC COMPANY LIMITED

i) Organization and administration;
ii) Financial management, accounting and budgeting;
iii) Planning, engineering and operations; and,
iv) Customer Relations

PHASE IIB - INQUIRY INTO PROPOSALS MADE BY TOWN OF SUMMERSIDE ELECTRIC DEPARTMENT

PHASE III - RELATIONSHIP BETWEEN THE PUBLIC UTILITIES COMMISSION AND ELECTRIC UTILITIES SUPPLYING POWER TO RESIDENTS OF PRINCE EDWARD ISLAND

i) Statutory authority of the Public Utilities Commission
ii) Criteria used by the Public Utilities Commission in evaluating:
    (a) Purchases or acquisitions by electric utilities supplying power to residents of Prince Edward Island;
    (b) Proposed rates to be charged by electric utilities supplying power to residents of Prince Edward Island;
    (c) The efficiency of the operations of electric utilities supplying power to residents of Prince Edward Island.

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PHASE IV - RELATIONSHIP BETWEEN THE GOVERNMENT OF PRINCE EDWARD ISLAND AND ELECTRIC UTILITIES SUPPLYING POWER TO RESIDENTS OF PRINCE EDWARD ISLAND

i) Statutory authorities;

ii) Mechanisms by which Government policies and those of Government agencies are imparted to electric utilities supplying power to residents of Prince Edward Island;

iii) Liaison, if any, between electric utilities supplying power to residents of Prince Edward Island and Government and its agencies.

PHASE V - POLICY RESPECTING THE FOLLOWING:

i) Alternate sources of electric power, including conservation;

ii) Appropriate public input in determining matters relating to the cost of electric power.

CLOSING STATEMENTS

2. Unless otherwise ordered by the Commissioner, hearings of the Commission shall be open to the public.

3. The Secretary to the Commission is Mrs. Josette Gilbank of East Royalty, Prince Edward Island.

4. All hearings of the Commission shall be recorded by electronic means. Transcripts may be obtained from the Secretary to the Commission after their production, upon advance subscription and payment of their cost. A copy of the transcript of all public hearings shall be maintained in the office of the Commission during the duration of the Inquiry and shall be available for examination at the office of the Commission during office hours, on a first come, first served basis.

5. Each exhibit presented before the Commission shall be listed and identified by a number which shall be used for the length of the Inquiry.

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6. Any person who wishes to examine the exhibits filed at a public hearing of the Commission shall contact the Secretary and obtain the prior permission of the Commission. Such examination must take place at the office of the Commission during office hours and in the presence of the Secretary.

7. Unless otherwise ordered by the Commissioner, any motion to be presented to the Commission, must be communicated to the Secretary for the Commission at least twenty-four hours in advance.

8. In the event that any hearings are held in camera pursuant to direction of the Commissioner, then only persons who are authorized by the Commission shall be given access to evidence, documents or exhibits submitted during such hearings.

9. These Rules may be amended by the Commissioner from time to time without notice.

10. These Rules are made to facilitate the work of the Commission and the carrying out of its mandate and they must be interpreted accordingly.

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SPECIAL RULES APPLICABLE TO PHASE I

11. Phase I shall be a briefing stage during which members of the public, as individuals or representatives of groups or organizations, will have an opportunity to brief the Commission.

12. Phase I hearings shall be held at centres across the Province at the locations and times set out in the following schedule, and at such further and other locations and times as the Commission may decide:

Tuesday, March 2	SUMMERSIDE Legion Hall	7:30 - 10:00 p.m.
Wednesday, March 3	SUMMERSIDE Three Oaks H.S.	7:30 - 10:00 p.m.
Thursday, March 4	ELMSDALE West Isle H.S.	7:30 - 10:00 p.m.
Monday, March 8	SOURIS Knights of Columbus Hall	7:30 - 10:00 p.m.
Tuesday, March 9	MONTAGUE Lions Club	8:00 - 10:30 p.m.
Wednesday, March 10	CHARLOTTETOWN Farm Centre	2:00 - 5:00 p.m. AND 7:30 - 10:00 p.m.
Thursday, March 11	CHARLOTTETOWN Farm Centre	2:00 - 5:00 p.m.
Thursday, March 11	MORELL Legion Hall	7:30 - 10:00 p.m.

The above schedule is subject to change depending on weather conditions.

13. Briefs or presentations from members of the public may be either written or oral. Written briefs are encouraged. Where briefs are in writing, the Commission requests those submitting briefs to provide them to the Commission two days in advance of the hearing. At the expense of the parties requesting them, copies of briefs received by the Commission will be made available in advance of the public hearings, as the Commissioner may order.

14. Persons, groups or organizations making presentations during Phase I will not be sworn and presentations will not be under oath.

15. Persons, groups or organizations making presentations may be questioned by Commission Counsel, Maritime Electric Company Limited, by any person or Company whose conduct is being inquired into or against whom any allegation is made during the presentation.

16. Persons making allegations or charges against any person or Company during Phase I - Public Hearings may be required by the Commission to appear and testify at a subsequent formal phase of the Inquiry, in which event such persons will be required to make such allegations or charges under oath and be subject to examination by Counsel for the Commission, Counsel for Maritime Electric Company Limited, and where applicable, may be examined by any person or his Counsel whose conduct is being investigated or against whom such charge is made.

17. After completion of Phase I, the Commissioner will prepare a summary of the briefs received during Phase I which summary shall be tabled at the commencement of Phase II and may be dealt with by the Commissioner, Counsel and persons whose conduct is being investigated or against whom a charge is made during the Inquiry.

18. At the conclusion of the last phase of the Inquiry, any person who has made a presentation during Phase I may make a closing statement in support of his presentation. The closing statement may be either written or oral. If the statement is in writing, it may be presented orally at the public hearing held for presentation of closing statements, or filed with the Commission. Where any closing statement is filed with the Commission and not presented orally at the public hearing held for presentation of closing statements, then such closing

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RULE 18 Cont'd.

statement shall be read into the record by Commission Counsel. The Commissioner may request clarification or supplementary information from any person making a closing statement.

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SPECIAL RULES APPLICABLE TO PHASES II, III, IV AND V

19. The hearings of the Commission for Phases IIA, III, IV and V shall be held at the Farm Centre, University Avenue, Charlottetown, Prince Edward Island, and the hearings of the Commission for Phase IIB shall be held in Summerside, unless the Commission decides otherwise.

20. The hearings of the Commission shall generally be at the following times: Monday through Thursday 2:00 p.m. to 5:00 p.m., and 7:00 p.m. to 9:00 p.m.; Friday 2:00 p.m. to 5:00 p.m.

21. The first hearing shall be held on April 19, 1982, unless the Commission decides otherwise.

22. Any person whose conduct is being investigated or against whom any charge is made in the course of the investigation, shall be entitled to be heard, shall be entitled to cross-examine witnesses who give testimony relating to the investigation of his conduct or such charge made against him, and during such procedures, shall be entitled to be represented by Counsel if such person so desires.

23. All witnesses shall be witnesses of the Commission. All witnesses called shall be called by the Commission. Witnesses shall be entitled to be represented by Counsel during their examination. The Commission will call witnesses on behalf of and at the request of any person whose conduct is being investigated or against whom a charge is made in the course of the investigation, relating to the investigation of such person's conduct or the charges made against such person.

24. Any person, other than a person whose conduct is being investigated or against whom a charge is made, who wishes to testify before the Commission must contact the Secretary to the Commission in writing and indicate at that time the nature of the information such person wishes to bring to the attention of the Commission.

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25. Any person, other than a person whose conduct is being investigated or against whom a charge is made, who wishes to have some person other than himself or herself called as a witness to testify before the Commission, must contact the Secretary to the Commission in writing and indicate at that time the nature of the information such person making the request wishes to bring to the attention of the Commission.

26.(a) Any person whose rights may be affected by the Inquiry, other than a person whose conduct is being investigated or against whom a charge is made, may request Commission Counsel to ask questions or pursue a particular line of inquiry to any witness before the Commission on behalf of such person. Such questions or line of inquiry must be relevant to the Inquiry. All questions or suggestions for the questioning shall be in writing. Reasonable advance notice shall be given to Commission Counsel where practicable; or

(b) Any person whose rights may be affected by the Inquiry, other than a person whose conduct is being investigated or against whom a charge is made, may, through legal counsel, ask questions to witnesses appearing before the Commission. Such questions must be relevant to the Inquiry. Such person shall for that purpose be represented by qualified legal counsel and shall advise the Commission in writing in advance of the first hearing in which he intends to ask questions to any witness or witnesses of the name of his legal counsel and of the hearings in which he intends to so participate.

27. Unless otherwise ordered by the Commission, all witnesses will testify from prefiled evidence which shall be filed with the Secretary to the Commission at least forty-eight hours in advance of the date and time set for hearing of such witness, supplemented orally as a result of examination at the hearing, and as the Commission deems appropriate.

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28. Witnesses shall first present their evidence and then shall be subject to examination by Counsel for the Commission and then by other persons having standing before the Commission or their Counsel, and they shall proceed in such order as the Commissioner may direct, after which such witness or the Counsel for such witness shall have an opportunity for re-examination. At the completion of the hearings relating to the particular matter being investigated or charge against such witness, such witness or the Counsel for such witness will be provided an opportunity to make a summary. Where such witness or Counsel is entitled to make a closing statement at the conclusion of the Inquiry in accordance with Rule 32, such opportunity to make a summary shall be considered to be a substitution for, and not an addition to, the opportunity to make a closing statement.

29. Out-of-pocket travelling expenses of witnesses called by the Commission and incurred for the purpose of appearing as witnesses before the Commission may, in the discretion of the Commissioner, be reimbursed upon presentation of proper proof of such expenses to the Secretary of the Commission.

30. Witnesses subpoenaed to appear before the Commission must attend the hearing at the place, time and date indicated under such penalties as provided by law.

31. Phase V will be a policy phase held for the purpose of receiving prepared briefs containing informed opinions or factual data from those especially knowledgeable of subject matters to be covered during Phase V.

32. At the conclusion of the last phase of Inquiry, any person whose conduct is being investigated or against whom any charge is made during Phases II to V of the Inquiry may make a closing statement in support of his case. All closing statements shall be in writing and shall be prefiled with

...10

RULE 32 Cont'd.

the Commission two days prior to the date scheduled for their presentation and shall be presented orally at the public hearing held for presentation of closing statements. The Commissioner may request clarification or supplementary information from any person making a closing statement.

DATED THE NINETEENTH DAY OF FEBRUARY, 1982

Revised February 25, 1982
Revised March 31, 1982

Melvin J. McQuaid, Q.C.
Commissioner

Josette Gilbank, CPS
Secretary

FILED IN THE SUPREME COURT
ON THE 25th DAY OF May 1982.

C A N A D A

APPENDIX 4

PROVINCE OF PRINCE EDWARD ISLAND

NO. GDC 3656

IN THE SUPREME COURT

BETWEEN JAMES ROBERT ROY JOHNSTONE,
WENDELL RODERICK MacLAINE
and H.O.P.E. ENVIRONMENTAL GROUP

APPLICANTS

AND: HON. MELVIN J. McQUAID, COMMISSIONER BY WHOM THE ELECTRICAL POWER INQUIRY IS BEING CONDUCTED IN PURSUANCE OF ORDER NO. EC 1173/81 OF THE LIEUTENANT GOVERNOR IN COUNCIL OF THE PROVINCE OF PRINCE EDWARD ISLAND

RESPONDENT

ORDER

UPON READING the Originating Notice (Application Inter Partes) of the Applicants;

AND UPON READING the Affidavits of James Robert Roy Johnstone, Wendell Roderick MacLaine and Melvin J. McQuaid, Q.C.;

AND UPON READING the authorities which were referred to by Counsel for the Applicants, Counsel for the Respondent and Counsel for the Attorney-General and Minister of Justice;

AND UPON HEARING Counsel for the Applicants;

.../2

IT IS HEREBY ORDERED that the Application be dismissed without costs.

DATED this 26th day of April ~~May~~, A.D. 1982

J.

S. David H. Jenkins,
Solicitor for the Respondent,
Consenting as to Form.

APPENDIX 5

CANADA

PROVINCE OF PRINCE EDWARD ISLAND

NO. GDC-3656

IN THE SUPREME COURT - IN BANCO

BETWEEN:

JAMES ROBERT ROY JOHNSTONE,
WENDELL RODERICK MACLAINE and
H.O.P.E. ENVIRONMENTAL GROUP

APPLICANTS

AND:

HON. MELVIN J. MCQUAID, COMMISSIONER
BY WHOM THE ELECTRIC POWER INQUIRY IS
BEING CONDUCTED IN PURSUANCE OF ORDER
NO. EC 1173/81 OF THE LIEUTENANT
GOVERNOR IN COUNCIL OF THE PROVINCE
OF PRINCE EDWARD ISLAND

RESPONDENT

ORDER DISMISSING APPLICATION TO EXTEND TIME FOR APPEAL

UPON THE APPLICATION of John L. MacDougall, Esq., counsel for the applicants for an order extending time to file and serve a notice of appeal from a judgment of The Honourable Kenneth R. MacDonald, delivered on the 26th day of April 1982, whereby the application of the applicants for Orders of Mandamus and Prohibition against the respondent, Melvin J. McQuaid, in respect to a commission of inquiry, established under the provisions of the Public Inquiries Act, R.S.P.E.I. (1974), Cap. P-30, was dismissed;

AND UPON HEARING John L. MacDougall on behalf of the applicants, as well as S. David H. Jenkins on behalf of the respondent, and Ralph Thompson on behalf of the Attorney

General of /

General of Prince Edward Island;

AND IT APPEARING that the time for filing and serving notice of appeal expired on the 11th day of May 1982;

AND IT FURTHER APPEARING that the application to extend time was not made until May 26, 1982, and that the commission of inquiry continued until the respondent received notice of the within application, during which time (between April 26th and May 26th) an important part of the public inquiry was nearly completed.

NOW THEREFORE, for the reasons stated in a written judgment filed herein;

I DO ORDER that the application to extend time for filing and serving notice of appeal against the judgment of The Honourable Kenneth R. MacDonald of April 26, 1982, is dismissed;

AND I DO FURTHER ORDER that the applicants pay the respondent's costs to be taxed.

DATED at Charlottetown this 8th day of June A.D. 1982.

John P Nicholson

C.J.

CANADA

PROVINCE OF PRINCE EDWARD ISLAND NO. GDC-3656

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OF PRINCE EDWARD ISLAND

RESPONDENT

Before: The Honourable Chief Justice Nicholson

Date of Hearing: June 3, 1982

Date of Judgment: June 7, 1982

Counsel for the applicants	John L. MacDougall, Esq.
Counsel for the respondent	S. David H. Jenkins, Esq.
Counsel for the Attorney General of P. E. I.	Ralph Thompson, Esq.

CANADA

PROVINCE OF PRINCE EDWARD ISLAND NO. GDC-3656

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RESPONDENT

NICHOLSON, C.J. (CHAMBERS)

Pursuant to the provisions of the Public Inquiries Act, R.S.P.E.I. (1974), Cap. P-30, The Lieutenant Governor in Council on December 10, 1981, appointed Melvin J. McQuaid a Commissioner: *to make full inquiry and to make findings and recommendations consistent with the public interest of the Province of Prince Edward Island into and concerning all matters relating to the cost of electric power to the residents of Prince Edward Island, and, without restricting the generality of the above terms of reference, to inquire into and report and make recommendations to the Lieutenant Governor in Council on the following matters*. The Order in Council goes on to set out nine separate matters to be inquired into, of which eight relate to the operation of Maritime Electric Company, Limited in this province. After /

province. After enumerating eight particular matters to be inquired into relating to the operation of Maritime Electric Company, Limited, the Order in Council concludes as follows:

> *Any other related matters which the Commission considers should be brought to the attention of the Lieutenant Governor in Council.*
>
> *Council further ordered that the Commission may accept for consideration submissions from such persons or organizations as the Commission, in its discretion, may allow.*
>
> *Council further ordered that the Commission may engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants including the services of counsel to aid and assist the Commission in relation to the inquiry as may be deemed necessary.*
>
> *And finally, Council directed that the costs for the inquiry be assigned to and paid from appropriations to the Executive Council.*

Commissioner McQuaid proceeded to set up "Rules of Practice and Procedure" which were intended to govern all proceedings relating to the inquiry. Paragraph 1. of the Rules of Practice and Procedure provides as follows:

> *The Electric Power Inquiry will be an inquiry into all matters relating to the cost of electric power to residents of the Province of Prince Edward Island. The Inquiry will be divided into separate phases as follows:*
>
> ***PHASE I - PUBLIC HEARINGS*** *- Into all matters relating to the cost of electric power to the residents of the Province.*
>
> ***PHASE IIA - INQUIRY INTO THE AFFAIRS OF MARITIME ELECTRIC COMPANY LIMITED***

i) Organization /

- *i) Organization and administration;*
- *ii) Financial management, accounting and budgeting;*
- *iii) Planning, engineering and operations; and,*
- *iv) Customer Relations*

PHASE IIB - INQUIRY INTO PROPOSALS MADE BY TOWN OF SUMMERSIDE ELECTRIC DEPARTMENT

PHASE III - RELATIONSHIP BETWEEN THE PUBLIC UTILITIES COMMISSION AND ELECTRIC UTILITIES SUPPLYING POWER TO RESIDENTS OF PRINCE EDWARD ISLAND

i) Statutory authority of the Public Utilities Commission

ii) Criteria used by the Public Utilities Commission in evaluating:

  (a) Purchases or acquisitions by electric utilities supplying power to residents of Prince Edward Island;

  (b) Proposed rates to be charged by electric utilities supplying power to residents of Prince Edward Island;

  (c) The efficiency of the operations of electric utilities supplying power to residents of Prince Edward Island.

PHASE IV - RELATIONSHIP BETWEEN THE GOVERNMENT OF PRINCE EDWARD ISLAND AND ELECTRIC UTILITIES SUPPLYING POWER TO RESIDENTS OF PRINCE EDWARD ISLAND

i) Statutory authorities;

ii) Mechanisms by which Government policies and those of Government agencies are imparted to electric utilities supplying power to residents of Prince Edward Island;

iii) Liaison, if any, between electric utilities supplying power to residents of Prince Edward Island and Government and its agencies.

PHASE V - /

PHASE V - POLICY RESPECTING THE FOLLOWING:

> *i) Alternate sources of electric power, including conservation;*
>
> *ii) Appropriate public input in determining matters relating to the cost of electric power.*

The rules which are thirty two in number were formulated on February 19, 1982, revised on February 25, 1982, and finally revised on March 31, 1982. According to the rules applicable to Phase (1), hearings were to commence on Tuesday, March 2, 1982, and were to conclude on March 11, 1982. It was intended that these hearings be held at Summerside and Elmsdale in Prince County, Charlottetown in Queens County and at Souris, Montague and Morell in Kings County.

Phase 2(a) of the inquiry has to do with "inquiry into the affairs of Maritime Electric Company, Limited" and, according to Rule 21, the first hearing on this phase of the inquiry was to be held on April 19, 1982. The first of such hearings actually began on April 22, 1982.

On April 22, 1982, the present applicants made an application returnable before the presiding judge in Chambers at the Court House in Charlottetown, on Monday, the 26th day of April 1982, for the following relief:

> *1. an order in the nature of mandamus compelling the Respondent to allow the applicants, as persons whose rights may be affected by the Electric Power Inquiry, the right to conduct on their own behalf and without counsel the examination of witnesses appearing before the Respondent during the said Inquiry;*
>
> *2. an order in the nature of prohibition restraining the Respondent from denying the Applicants, as persons*

> *whose rights may be affected by The Electric Power Inquiry, their right to conduct on their own behalf and without counsel the examination of witnesses appearing at the said Inquiry.*

From the foregoing it will be seen that the applicants sought the right to conduct on their own behalf and without counsel the examination of witnesses appearing before the respondent during the inquiry and also an order restraining the Commissioner from denying the applicants "their right to conduct on their own behalf and without counsel the examination of witnesses appearing at the said inquiry".

The rules applicable to phases 2, 3, 4 and 5 of the inquiry are such as would restrict the rights of persons appearing before the inquiry from conducting on their own behalf and without counsel the examination of witnesses appearing before the inquiry.

On the hearing of the application the Commissioner filed an affidavit relating to the Rules of Procedure which were adopted in which he deposes inter alia:

> *4. THAT it is my interpretation, based upon the advice of my counsel that:*
>
> *(a) It is the inherent jurisdiction of the Commission to control its own proceedings;*
>
> *(b) I have the authority to regulate the proceedings of the inquiry;*
>
> *(c) I have the authority to determine for myself through the exercise of my discretion the practice best suited to make the proceedings effective, efficient, factual, practical and expeditious.*
>
> *(d) That I have the authority in my discretion to determine rules*

respecting the /

> *respecting the examination of witnesses called by the Commission to testify during the inquiry.*
>
> *5. THAT I have developed rules of practice and procedure for the inquiry, which rules were first published on February 19, 1982, were revised on February 25, 1982 and were further revised on March 31, 1982. A true copy of the Rules of Practice and Procedure is annexed hereto as Exhibit "B" to this my Affidavit.*
>
> *10. THAT after much thought, consideration and research I have determined that the examination of witnesses before the Commission of Inquiry should be confined to legal counsel in order to conduct an orderly and expeditious inquiry and avoid problems which I foresee could arise as a result of persons not trained in cross-examination of witnesses being involved in cross-examination of witnesses before the Commission.*
>
> *11. THAT pursuant to the authority vested in me by the said Order in Council I have engaged the services of legal counsel to aid and assist the Commission in relation to the inquiry, that such legal counsel is retained by the Commission of Inquiry on an ongoing basis throughout the inquiry and that such legal counsel does not have any adversarial role in the inquiry.*
>
> *12. THAT the Rules of Practice and Procedure have since initial publication provided and continue to provide at Rule 26 that members of the public may ask questions or pursue a particular line of inquiry to any witness before the Commission through the Commission's legal counsel, that such service is available to all members of the public without charge and that I have instructed Commission counsel to make himself available to members of the public for that purpose and to provide to members of the public a reasonable opportunity to confer with him in connection with any such questioning or examination.*

The hearing came on before MacDonald, J. on April 26, 1982, at which time the following oral judgment was given

whereby the /

whereby the relief sought by the applicants was refused:

> *THE COURT: I've had the benefit of reading all the materials that have been supplied to me, in particular the list of, the applicant's memorandum of authorities that detail some eighteen cases and in the circumstances I find that I have no alternative than to dismiss the application basically for the following reasons; however, if any written reasons are required, I will give them.*
>
> *First, and as a side point, I would not be able to accept the application of H.O.P.E. for the reasons that I've stated; that is, it's not a recognized person (before the court) being unincorporated. However, even if I were wrong on that point, I find the application of MacLaine to be a proper one and therefore I would go on and determine whether or not a public inquiry is susceptible to the prerogative writ of mandamus or prohibition. The cases, including those from the Supreme Court of Canada, are quite clear that a public inquiry is one that is relatively free to devise their own methods of operations and, as such, is not subject to the prerogative writ of prohibition or mandamus. There's the Godson case on that particular matter, and also the case of Lane v. Toronto.*
>
> *Specifically, the reason why mandamus and prohibition are said not to be applicable to inquiries, generally speaking, is that the inquiry is one that is set up by the Crown, whether or not we have a Crown any longer, it's set up by the Lieutenant Governor in Council and, as such, it derives its sole power from the Public Inquiries Act. Now, as I have stated, the Public Inquiries Act of Prince Edward Island is basically only a few paragraphs in length. It was made, undoubtedly, quite a number of years ago when public inquiries first came into prominence and back in those days there was no doubt that the government intended to give full authority to any commissioner, and this has never been changed under the legislation of Prince Edward Island, although it has in*

most other /

most other provinces in that there are limits put on what a commissioner may do.

Under the Public Inquiries Act of this particular province, paragraph six reads:

> 'The Commissioner may allow any person whose conduct is being investigated under this Act and shall allow any person against whom a charge is made' (below) - and this means that actually the only people who have a right to appear before an inquiry is - '(1) those who are being investigated! - and in that particular case the commissioner may allow a person, in the course of the investigation, to be represented by counsel.

It's not 'shall' but he only 'may', so it really shows the power that has been given to the commissioner to may allow any person whose conduct is being investigated and, doubtedly, Maritime Electric would fit within the scope of that part of the Act.

> '(2) Shall allow any person against whom any charge is made in the course of the investigation'.

Now, who is 'any person against whom a charge is made'? Most cases that I have found have interpreted that to mean a charge being laid; that is, a criminal charge, not merely an allegation of misconduct, but actually a criminal charge. Certainly no one here has been charged and other than Maritime Electric there's no one else's conduct being investigated.

That, more or less, takes care of mandamus and prohibition. However, even if I were wrong in saying that mandamus and prohibition are not available, and there are certain cases that state that it is available where the commissioner has gone or exceeded his jurisdiction, I would have to find that he has exceeded his jurisdiction here, which leads into the further point; that is, that a commissioner appointed under the Public Inquiries Act is allowed

to set his own /

to set his own rules for the commission and there have been numerous cases where various groups and persons have sought the right to come before commissions. However, a number of these cases are from Ontario and, because the Ontario Act is a more liberal Act, we really can't rely on the Ontario cases.

There is one particular case that I find to be particularly relevant, which is the Royal American Shows v. Laycraft. The Laycraft Commission was established a few years ago in Alberta and in that particular case the court set out what I find to be relevant points. It was stated there that a public inquiry is not subject to supervision by the court except in four particular areas: One was where the area of investigation, or the area of the investigation that has been set out in the terms of reference, have been exceeded, and that is not being alleged here and I would not find that. Secondly, where the commission seeks to inquire into matters outside the terms of its reference, that is not the grounds for the application here. Thirdly, where the commission, in the exercise of its anciliary powers wrongfully impairs the liberty or goods of a person, and that is not being alleged here, and the fourth reason, for supervision, is when the report of the commission of inquiry is susceptible of affecting the rights of persons. Now, the rights of persons is not mentioned under our Public Inquiries Act. There's no mention made of rights. We would have to go to the general law to determine what the rights of a person mean. Rights of a person mean, as in one particular case, the Bell case, the right to housing and non-discrimination. Other cases indicate a direct right to one party and this goes back again to the application of prohibition and mandamus in that the persons who ask, the persons who ask for prohibition and mandamus, must be persons that are affected by the findings or contemplated findings, other than the community as a whole. In other words, if the rights of the applicants are no different than the rights of the community as a whole, then they have no right

to apply for /

> to apply for mandamus or prohibition. It has to be a particular right that is affecting them, particularly, some right that is being taken away from them particularly.
>
> Mr. MacDougall referred to the Canada Act, Section (2), which reads that everyone has the following fundamental freedoms; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. That, I take to mean merely what it is stated. It certainly would not mean the right to express one's opinion to a person or to a body such as the commission. It means that you have the right to express your opinion on any subject and certainly that is not being taken away from them here. It can be said that the commission doesn't want to hear the opinion of the applicants but I don't read the Canada Act, Section (2) as giving a person a particular type of a right that would require the commission to hear their opinion.
>
> Natural justice and the right to speak on one's own behalf again falls within the wise power that a commissioner has in this type of a case to set the guidelines for the type of inquiry he wishes to hold. Until one actually reads the cases and some of the articles that have been filed dealing with the powers of a commission of inquiry, it's hard to realize the degree of power that they are given. I have no hesitation in saying that originally when I was told that I was to handle the matter, I felt that the application would be one that would succeed but, having read the applicable law on the matter, I find that I have no alternative than to dismiss the application.

This is a very short judgment, easily understood and could have been made available to the applicants on very short notice if any urgent request had been made of the court officials by counsel for the applicants to have the reasons for judgment transcribed.

Rule 62.04 of the Civil Procedure Rules provides as follows:

> *Unless the Appeal Division or a judge thereof otherwise orders, an appellant shall, within fifteen days from the day that the order appealed from was granted or made,*
>
> *(a) file a copy of the notice of appeal with the prothonotary;*
>
> *(b) serve a copy of the notice of appeal upon any party directly affected by the appeal;*
>
> *(c) give written direction to the prothonotary, by ordinary mail or otherwise or other authorized person requesting a transcript of the evidence, and other material required for the appeal to be filed in the prothonotary's office as soon as possible.*

If any appeal from the judgment of Mr. Justice MacDonald was to be taken, the notice of appeal is required to be filed within fifteen days from the days from the day that the order appealed from was granted or made. Excluding the 26th of April, a notice of appeal would be required to be filed by May 11, 1 82. While the rule does not expressly give the court power to extend the time for filing notice of appeal; nevertheless, the court under that section has power in its discretion to extend the time for filing and serving a notice of appeal beyond the fifteen-day limit provided in the rule. On May 26, 1982, fifteen days after the time limit for filing and serving notice of appeal had expired, the applicants made the following application:

> *TAKE NOTICE that an application will be made on behalf of the applicants to the judge presiding in chambers at the Court House, in Charlottetown, Prince Edward Island, on Thursday, the 3rd day of June,*

1982, at the /

> *1982, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as the application can be made for an Order extending the time limit within which a Notice of Appeal may be filed, said application being made pursuant to Rule 62.04 of the Civil Procedure Rules.*
>
> *AND TAKE NOTICE that in support of the application will be read the affidavit of John MacDougall, a true copy of which is hereto attached, (and such other material as counsel may advise, a true copy of which will be delivered to you or your solicitor not later than one clear day before the hearing of the application.)*
>
> *DATED AT Charlottetown, Prince Edward Island, this 26th day of May, 1982.*
>
> *(Sgd.) John L. MacDougall*
> *JOHN L. MACDOUGALL*
> *of 82 Fitzroy Street*
> *Charlottetown*
> *Prince Edward Island,*
> *Solicitor for the Applicants.*

This application is supposed to have been made pursuant to the provisions of Rule 62.34, which has to do with applications to the court in banco. Rule 62.34(2) provides that "every notice of application shall concisely enumerate every ground upon which it is based". It is to be noted that the application does not state any grounds nor does it mention the judgment or order appealed against. There is a lengthy affidavit filed by counsel for the applicants which is said to be "in support of the application".

The hearing came on before me in Chambers on Thursday, the 3rd day of June 1982, at which time counsel for the applicants made reference to a memorandum of authorities to be relied upon by the applicants. That memorandum is as follows:

Memorandum of /

Memorandum of authorities of Applicants Pursuant to Rule 62.34(5)

1. Rule 62.04

2. Holmested & Gale, R. 504, pars. 1-11

All of which is respectfully submitted this 2nd day of June, A.D. 1982.

The memorandum filed by counsel for the applicants is not of much help in determining what is a very important question, and the presentation made by the applicants in support of an application to extend time for filing a notice of appeal was brief and unimpressive. Counsel for the applicants was asked why he did not state the grounds of his application as required by Rule 62.34(2), and his response was that the grounds were contained in his affidavit. I asked him to state those grounds on the day of the hearing. His response was (1) justice requires an extension of time and (2) equity. I asked him if he cared to elaborate on these grounds and he said those were the grounds he relied upon.

The application was strenuously opposed by counsel for the respondent, who cited the following authorities in support of his position that no extension of time for filing leave to appeal should be granted:

Civil Procedure Rule 62.04;

Bluenose Lanes Ltd. v. Richardt et al.; I.A.C. Ltd., Third Party (1975), 60 D.L.R. (3d) 561, 12 N.S.R. (2d) 540 (C.A.);

Scotia Chevrolet Oldsmobile Ltd. v. Whynot (1970), 15 D.L.R. (3d) 438;

Eidsvik v. Shepherd & Bond, (1975)
4 W.W.R. 105 (B.C.C.A.);

Maritime Co-Op Services Ltd. v.
Maritime Processing Co. (1979),
32 N.S.R. (2d) 71, 11 C.P.C. 146,
54 A.P.R. 71 (C.A.).

All of which is respectfully submitted this 1st day of June, A.D. 1982.

(Sgd.) S. David H. Jenkins
S. David H. Jenkins
Solicitor for the Respondent.

In the case of Bluenose Lanes Ltd., Coffin, J.A. states at page 564:

> *In Scotia Chevrolet Oldsmobile Ltd. v. Whynot (1970), 15 D.L.R. (3d) 438, 1 N.S.R. (2d) 1041, Cooper, J.A., summarized the authorities including Blundon et al. v. Storm and, at p. 447 D.L.R., p. 1056 N.S.R., referred to the statement of Freedman, J.A., in Radclyffe et al, v. Rennie and McBeath (1964), 45 D.L.R. (2d) 697 at p. 698, 49 W.W.R. 187, with respect to an application for relief under s. 65 of the Supreme Court Act:*
>
> > *'The authorities indicate that to qualify for relief under the section an applicant must show two things:*
> >
> > *(1) that he had a bona fide intention to appeal while the right to appeal existed,*
> >
> > *(2) that he has a reasonable excuse for the delay in not having launched his appeal within the prescribed time.'*

and further:

> *In Crowell Bros. Ltd. v. Maritime Minerals Ltd. [1940] 2 D.L.R. 403, Doull, J., while concluding that the Court had power to grant an extension said that that power should only be exercised if exceptional circumstances are shown.*

> *In Geck et al. v. Geck et al., [1944] 3 W.W.R. 607, in the Saskatchewan Court of Appeal, MacDonald, J.A., set out the principle that a party applying for an extension of time must show, (1) bona fide intention to appeal while the right of appeal existed, and (2) that it is at least arguable that the judgment is wrong.*

I do not think for the purpose of this judgment it is necessary to refer to the other authorities cited, except to say that they all seem to indicate that if the court is to exercise its discretion to extend time for filing notice of appeal, the applicant must establish: (1) that he had a bona fide intention to appeal while the right of appeal existed, and (2) that he had a reasonable excuse for the delay in not having launched his appeal within the prescribed time, and (3) that it is at least arguable that the judgment sought to be appealed against is wrong.

In my opinion, the applicants here have failed to establish any of those three requirements. It is apparent that the applicants had no bona fide intention to appeal until they had a written undertaking that the Public Interest Advocacy Center of Toronto represented by Mr. Roman "would fully indemnify Mr. Johnstone, Mr. MacLaine and the H.O.P.E. Environmental Group should costs be taxed against them as a consequence of losing the appeal". That undertaking was not given until May 21, 1982, and if it had not been given, I am left with the firm impression that no application to extend time for filing an appeal would have been made. As to the excuse for the delay in launching the appeal within the prescribed time, I find nothing in the affidavit of counsel for the applicants which could be said to constitute a reasonable excuse for delay. If there had been a bona fide intention to appeal, there is no good reason why the notice of appeal could not have been filed within the prescribed time. Finally, counsel for the applicants made no attempt whatever to argue that the judgment of Mr. Justice MacDonald was wrong.

In all of the circumstances of this application and considering the authorities cited to me, I have no alternative than to dismiss the application to extend time for filing and serving notice of appeal from the judgment of Mr. Justice MacDonald of April 26, 1982. Consequently, the application is dismissed and the applicants are ordered to pay the respondent's costs to be taxed.

John P

June 7, 1982

C.J.

APPENDIX 6

THE ELECTRIC POWER INQUIRY

PHASE I - PUBLIC HEARINGS

Public hearings for receiving both oral and written submissions to The Electric Power Inquiry were held as follows:

Wednesday, March 3	SUMMERSIDE Three Oaks High School	7:30 - 10:00 p.m.
Monday, March 8	SOURIS Knights of Columbus Hall	7:30 - 10:00 p.m.
Tuesday, March 9	MONTAGUE Lions Club	8:00 - 10:30 p.m.
Wednesday, March 10	CHARLOTTETOWN Farm Centre	2:00 - 5:00 p.m. 7:30 - 10:00 p.m.
Thursday, March 11	CHARLOTTETOWN Farm Centre	2:00 - 5:00 p.m.
Thursday, March 11	MORELL Legion Hall	7:30 - 10:00 p.m.
Friday, March 12	CHARLOTTETOWN Farm Centre	10:00 - 12:00 noon 2:00 - 5:00 p.m.
Wednesday, March 24	ELMSDALE West Isle School	7:30 - 10:00 p.m.
Thursday, March 25	SUMMERSIDE Three Oaks High School	7:30 - 10:00 p.m.

APPENDIX 7

TERMS OF REFERENCE

Study of the Organization Arrangements Necessary for Maritime Electric Company to Retain the Services Currently Contracted out to Montreal Engineering

The intent of this study is to examine the present relationship between Montreal Engineering and Maritime Electric Company and to determine the feasibility and the organizational implications of Maritime Electric Company discontinuing the contracting out of as many of these services as possible.

As stated in the Inquiry, it is understood that not all of the present services contracted out by Maritime Electric can be retained by revising the organization of the company. There are certain services which will probably always be contracted out, but this study is to examine those which could be retained by the company subject to a change in its organization and current staffing.

This study is to be an independent one conducted by a reputable consulting firm which has no interests in either Maritime Electric Company or Montreal Engineering. Without limiting the content of such a study, the major items to be answered should include the following:

1. Orientation of the Consultant to the Events Leading up to the Study

To benefit from the information obtained during the public inquiry to the costs of electricity in P.E.I. The consultant should be required to conduct orientation interviews with the Commissioner and any of the parties who took part in the Inquiry which he deems appropriate.

2. Establish Details of Current Services

This study should describe each of the distinct services currently provided under the service agreement between the two parties. These services should be described with sufficient detail to indicate

...2...

the nature of the service, and should also include the level of activity including the hours charged for each of these services for the fiscal years 1979-80, 1980-81, 1981-82. The annual cost of each of these services against the reported hours should also be included.

3. Establish Planned or Anticipated On-Going Services

Assuming there is no change in the present practice of contracting out the services described in Section 2 above, nor any change in the service agreement between the parties, what are the long range plans for the continued use of these services? This information should cover the description of services, the expectant number of hours and the anticipated costs allowing for appropriate changes in the billing of fees.

4. Establish the Functions Which Could be Assumed by Maritime Electric Company Subject to the Hiring of New Staff and/or the Training of Existing Staff

For each of the services described in Section 3 above, the intent of this section is to define those functions which could be phased out of a contracting arrangement and phased into Maritime Electric Company excepting the corresponding need to alter the organization and staffing arrangements of Maritime Electric Company.

In particular, this section should look at the extent to which there could be a full-time CEO resident in Prince Edward Island, the extent to which all other services a combining of less than full-time functions could result in a number of full-time positions at Maritime Electric to provide these services. The information provided in this section should show how an examination of this question has taken into account the existing personnel of Maritime Electric and their career interests, qualifications and aspirations.

5. Identify Changes to Existing Maritime Electric Company Organization

Corresponding to Section 4, this section should identify the actual changes to the Maritime Electric organization in terms of revised structures, reporting relationships, positions, responsibilities and

...3...

authorities. It may even include changes in systems and procedures. This section should show what form the revised organization should take to accommodate the retention of services presently contracted out.

6. Attendant Cost Savings

If changes to the Maritime Electric organization are identified in Section 5, this section should state the attendant cost savings by comparing the estimated payroll and overhead costs of these services to the planned cost of contracting out these services to Montreal Engineering under the present agreement. It should reflect the difference, if any, of the wage and salary levels in P.E.I. as compared to Montreal.

7. Establish Implementation Plan

For the organizational and staffing changes identified in Section 5, a detailed plan to implement the revised structures should be defined in this section. This should include a statement of the positions that would be required, the qualifications of staff, the staffing timetable, the appropriate phase-out, phase-in plan to assure continuity of the services which are currently provided under the agreement, and any other factors which support a gradual plan to allow the Maritime Electric Company to move towards the revised organization.

8. Identify Services for Which Contracting Out Will Still be Required

Assuming there will be services for which contracting out is still required, identify what those services are, the rational for continuing to contract them out, and the criteria used both present and future for determining the services that should be contracted out.

9. Identify the Board of Directors' Policy on the Purchase of Services and Exclusive Service Agreements

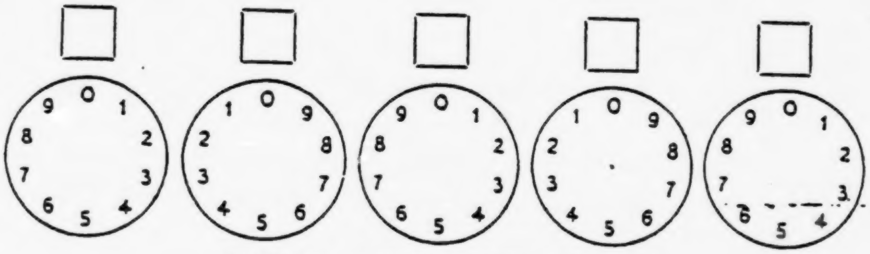
The final section of the report should indicate the Board of Directors' public policy on both the purchase of services and also its view on exclusive service arrangements for agreements.

...4...

This was discussed as a restrictive practice during the Inquiry and the official and public position should be stated with respect to the matter.

APPENDIX 8

Schedule 29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PLEASE READ YOUR METER

Mark on above dials the exact position of hands on Meter as you face it. PLEASE DATE, SIGN AND MAIL PROMPTLY.

DATE NAME

ADDRESS

COMPANY METER NUMBER

APPENDIX 9

PHASE I - WRITTEN BRIEFS

1. Cavendish Farms Ltd.
2. Rita R. Salsbury
3. Town of Summerside
4. H.O.P.E.(2)
5. Kings Co. Branch - P.E.I. Wildlife Federation
6. Harbourview Training Centre
7. Town of Souris
8. Souris Energy Council
9. Southern Kings & Queens Community Advisory Board
10. Paul A. Bradley
11. Al Coneen
12. Kristen MacQueen
13. Michael Page
14. Cef Pobjoy
15. Gary Schneider
16. Sandy MacKay
17. Frank Storey (2)
18. Federation of P.E.I. Municipalities
19. P.E.I. Federation of Agriculture
20. Ole Hammarlund
21. Ad Hoc Committee of Forestry Industry Representatives
22. Betty Large
23. Canadian Union of Public Employees - P.E.I. Division
24. Prince Edward Island New Democratic Party
25. F.C. Palmer

PHASE I - Written Briefs (cont'd.)

26. Canadian Manufacturers' Association - P.E.I. Branch
27. Construction Association of Prince Edward Island
28. Ten Days for World Development
29. Kip Smith
30. Gordon MacQueen
31. Wendell MacLaine
32. Greater Charlottetown Area Chamber of Commerce
33. Marion Dyche
34. Social Action Commission, Diocese of Charlottetown
35. Anco Hamming
36. Prince Edward Island Recreation Association
37. West Prince Chamber of Commerce
38. West Prince Advisory Board
39. Prince Edward Island Federation of Labour
40. West Prince Industrial Commission
41. Frank Bryan
42. Greater Summerside Area Chamber of Commerce
43. Cooperative Union of Prince Edward Island
44. Prince Edward Island Curling Association
45. Mabel Englund
46. Margaret Ashford
47. Jan Vos
48. Mrs. C. Smith
49. Catholic Family Services Bureau
50. Edgar Hogan

APPENDIX 10

WITNESSES CALLED

1. Allan D. Cameron
2. Douglas Dennis
3. Douglas McKenney
4. John H. Reynolds
5. Paul Bradley
6. Clarence Powell
7. Paul Newcombe
8. John O. Dean
9. Larry W. Anderson
10. John Leighton
11. Clair Sudsbury
12. William Brennan
13. William Armes
14. Karl Winter
15. Robert Crockatt
16. David Burke
17. Robert O'Rourke
18. Donald Baker
19. Thomas Richardson
20. Nelson Johnstone
21. Benjamin Taylor
22. Melville Campbell
23. Hon. George R. McMahon
24. Hon. Barry R. Clark
25. Arthur J. Hiscock
26. Hon. J. Angus MacLean
27. Michael O. Brien
28. Kenneth J. Slater
29. Andrew Wells
30. Kirk Brown
31. Robert Popple
32. Gordon Edwards
33. Roy Johnstone
34. John K. Stutz
35. Wendell MacLaine

APPENDIX 11

THE ELECTRIC POWER INQUIRY

SCHEDULE OF HEARINGS

PHASES II - V

Hearings of The Electric Power Inquiry will resume on Thursday, April 22, 1982, at 2:00 p.m. in the Farm Centre, University Avenue, Charlottetown.

PHASE IIA - Inquiry into the affairs of Maritime Electric Company Limited.

PHASE IIB - Inquiry into proposals made by Town of Summerside Electric Department (to be held in Summerside).

PHASE III - Relationship between the Public Utilities Commission and electric utilities supplying power to residents of Prince Edward Island.

PHASE IV - Relationship between the Government of Prince Edward Island and electric utilities supplying power to residents of Prince Edward Island.

PHASE V - Policy respecting the following:

- (i) Alternate sources of electric power, including conservation;
- (ii) Appropriate public input in determining matters relating to the cost of electric power.

The hearings of the Inquiry shall be at the following times: Mondays through Thursdays, 2:00 p.m. to 5:00 p.m., and 7:00 p.m. to 9:00 p.m.; Fridays 2:00 p.m. to 5:00 p.m.

Unless otherwise ordered, all hearings will be open to the public. All testimony will be given under oath. Anyone wishing to testify during any of the subsequent phases of the Inquiry is asked to contact Mrs. Josette Gilbank, Secretary to the Commission, at P.O.Box 2140, Charlottetown, or telephone 894-7063.

Hon. Melvin J. McQuaid, Q.C.
Commissioner